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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 651

FRANK HAGUE, INDIVIDUALLY AND AS MAYOR OF JERSEY CITY, ET AL., ETC., PETITIONERS,

vs.

COMMITTEE FOR INDUSTRIAL ORGANIZATION, STEEL WORKERS ORGANIZING COMMITTEE OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 6, 1939.

CERTIORARI GRANTED FEBRUARY 6, 1939.

INDEX.

	Vol. 1 Page
Docket Entries	1
Bill of Complaint	4
Schedule "A": Public Notice	21
Schedule "B": An Ordinance	22
Schedule "C": Notice to All Workers in Hudson County	23
Schedule "D": Letter to William J. Carney, Dated December 20, 1937	25
Schedule "E": Public Notice as to Public Peace, etc.	26
Schedule "F":	
Letter to Daniel J. Casey, Dated December 17, 1937	27
Letter to Samuel L. Rothbard, Dated December 20, 1937	29
Letter to Daniel J. Casey, Dated December 20, 1937	30
Letter to Samuel L. Rothbard, Dated December 22, 1937	32
Letter to Daniel J. Casey, Dated December 23, 1938	33
Letter to Spaulding Frazer, Dated December 27, 1937	34
Letter to Daniel Casey, Dated December 28, 1937	35
Letter to Spaulding Frazer, Dated December 30, 1937	38
Letter to Daniel Casey, Dated December 27, 1937	39
Resolution Adopted by Veteran Organizations, Dated December 28, 1937	41
Letter to Daniel J. Casey, Dated January 3, 1938	45
Subpoena ad Respond	47
Notice of Motion for Bill of Particulars	48
Motion for Bill of Particulars	49
Order Requiring Bill of Particulars	53
Proof of Service	54
Bill of Particulars	55
Answer of Frank Hague, Daniel J. Casey, Harry Walsh and The Board of Commissioners of Jersey City	56
Amendment by Way of Supplement	61
Affidavit of Morris L. Ernst	62
Amendment to Defendants' Answer	69
Further Amendment to Defendants' Answer	71
Opinion, Clark, D. J.	72
Discussion	132
Objections to the Form of Proposed Decree	139

	Vol. I Page
Comments and Objections to Findings of Fact Submitted by Plaintiff	141
Objections and Comments to the Proposed Conclusions of Law	145
Findings of Fact and Conclusions of Law	146
Final Judgment and Decree	155
Notice of Appeal	159
Proceedings at Trial	160
Daniel J. Foley—	
Direct Examination	172
Cross-Examination	191
Re-Direct Examination	205
Re-Cross-Examination	205
Cross-Examination	209
David L. Clendennin—	
Direct Examination	213
Cross-Examination	237
David Silverstein—	
Direct Examination	245
Cross-Examination	268
James P. Sweeney—	
Direct Examination	284
Cross-Examination	306
Nancy Cox—	
Direct Examination	309
Cross-Examination	341
Jules Nydes—	
Direct Examination	343
Cross-Examination	350
Aaron Gilmartin—	
Direct Examination	357
Cross-Examination	366
Re-Direct Examination	372
Harry Arons—	
Direct Examination	373
Cross-Examination	376
Bella Kussy—	
Direct Examination	381
Cross-Examination	385

	Vol. I Page
Sol Chernofsky—	
Direct Examination	388
Cross-Examination	396
Morris Milgram—	
Direct Examination	402
Cross-Examination	411
Grace Milgram—	
Direct Examination	415
Cross-Examination	418
Re-Direct Examination	420
Morris Milgram (Recalled)—	
Direct Examination	421
Cross-Examination	422
Frances McKee—	
Direct Examination	429
Cross-Examination	435
Mildred Cox—	
Direct Examination	439
Cross-Examination	441
Ashley Carrick—	
Direct Examination	443
Cross-Examination	445
William C. Kernan—	
Direct Examination	447
Cross-Examination	450
Ashley Carrick (Recalled)—	
Cross-Examination	450
Re-Direct Examination	451
Timothy O'Brien—	
Direct Examination	454
Cross-Examination	465
Joseph Zarrella—	
Direct Examination	472
Cross-Examination	477
William Callahan—	
Direct Examination	478
Cross-Examination	481

Vol. I
Page

Francis Hunter—
Direct Examination 482
Joseph Zarrella (Recalled)—
Direct Examination 483
Francis Hunter (Resumed)—
Direct Examination 484
Cross-Examination 488
Thomas Hurley—
Direct Examination 494
Thomas Cometa—
Direct Examination 499
Cross-Examination 507
Joseph C. Glavin—
Direct Examination 514
Daniel Casey—
Direct Examination 529

Vol. II

Cross-Examination 790
Re-Direct Examination 838
Re-Cross-Examination 856
Mary Padla—
Direct Examination 858
Jean Palmieri—
Direct Examination 861
Lila Rocco—
Direct Examination 864
Grace Pecore—
Direct Examination 866
Cross-Examination 869
Dorothy Opitz—
Direct Examination 871
Charles C. Webber—
Direct Examination 878
Dorothy Opitz (Recalled)—
Direct Examination 880
Jeannette Kasen (Stipulated) 881

	Vol. II Page
Charles C. Webber (Resumed)—	
Direct Examination	884
Samuel Macri—	
Direct Examination	889
Cross-Examination	964
Re-Direct Examination	1012
Re-Cross-Examination	1018
Raymond Chasan—	
Direct Examination	1019
Frank Hague—	
Direct Examination	1030
	Vol. III
Cross-Examination	1395
Re-Direct Examination	1555
William Callahan—	
Direct Examination	1578

	VOL. IV Original	Print
Stenographer's minutes of hearing in D. C. U. S., District of New Jersey, May 26, 1938	83	83
Appearances	85	83
Colloquy	85	83
Statement by the Court re tentative decree	107	100
Proceedings in U. S. C. C. A., Third Circuit	108	101
Minute entry of hearing	108	101
Opinion, Biggs, J.	109	101
Appendix—Findings of fact and conclusions of law of trial court	141	128
Final judgment and decree of trial court	150	136
Ordinance of January 22, 1924	154	139
Ordinance of April 15, 1930	155	141
Dissenting opinion, Davis, J.	157	141
Judgment	185	164
Clerk's certificate (omitted in printing)	186	
Order allowing certiorari	187	165

INDEX TO EXHIBITS.

PLAINTIFFS' EXHIBITS.

Ex. No.	Description.	Offered Vol. I Page	Printed Vol. IV Page
1	Handbill	177	1
2	Stenographic Record	324	3
3	Stenographic Record	324	3
4	Leaflet	417	5
		Vol. III	
5	Card	1583	6
6	No Exhibit.		
		Vol. I	
7	Circular	457	7
8	Newspaper Picture From "Sunday News", May 8, 1938	476	8
		Vol. III	
9	Card	1583	..
		Vol. I	
10	Applications	539	9
11	Permit Granted for Street Meetings, Religious	539	9
		Vol. II	
12	Correspondence, Rothbard and Casey	687	9
13	Letters, Frazer and Casey	687	10
14	Form Used in Connection With Street Corner Permits	787	12
15	Pawnbrokers' Descriptive Sheets	688	12
16	Telegram, Dated May 10, to Daniel Casey From J. Harlan Cleveland, and Attached Papers	688	13
17	Application, Telegraphic, by Wm. N. Callahan, Managing Editor of "The Catholic Worker"	605	15
18	12 Letters of Protest	684	17
19	8 Letters, Dated Prior to January 1, 1938, Protests	685	18
20	Batch of Additional Letters of Protest	685	20
21	Protest of Jersey City Real Estate Board, Dated December 30, 1937	685	21

INDEX TO EXHIBITS—Continued.

Ex. No.	Description.	Offered Vol. II Page	Printed Vol. IV Page
22	Resolution From Community Center, Dated December 30, 1937	686	21
23	Letter, American War Veterans of Italian Extraction, December 29, 1937	686	22
24	Letter of Protest From Hudson County Post No. 2	687	22
25	Two Undated Letters of Protest	687	22
26	Five Protests	691	23
27	Letter With Lynch Resolution	691	23
28	Letter, "A Citizen", May 21	692	..
29	Page From "Jersey Observer", May 7, 1938	720	25
30	Card With Name of Witness Casey	726	27
31	Correspondence Re Denials of Permits	788	29
32	Circular Containing President's Message	933	33
33	Notice, Dated December 28, 1937	1064	35
34	Postal Cards Re Meeting of Veterans	1064	35
35	Notice of Meeting of Veterans	1067	36
		Vol. III	
36	Correspondence Between Mr. Hamill and Mr. Frazer	1200	37
37	List of Jersey City Plants	1222	44
38	Anti-Placard Ordinance	1225	45
39	Page 5, "Newark Star-Eagle", June 11, 1938	1338	..
40	"Newark Sunday Call", November 21, 1937	1341	47
41	WOR Radio Speech	1557	..
42	Clipping "New York Times", December 27, 1937	1557	49
43	Clipping "Jersey Journal", January 13, 1938	1558	51
44	Page 9, "Jersey Journal"	1559	55
45	Clipping "Jersey Journal", January 7, 1938	1559	57
46	Statement of January 6, 1938, at Armory	1560	59
47	Statement of Mayor Hague	1564	..
48	Picture of a Meeting, 1929	1574	..

INDEX TO EXHIBITS—Continued.

DEFENDANTS' EXHIBITS.

Ex. No.	Description	Offered Vol. III Page	Printed Vol. IV Page
1	Clipping	1591	61
2	Clipping	1591	..
3	Clipping	1591	62
4	Clipping	1591	62
5	Clipping	1591	62
6	Clipping	1591	62
7	Five Cards	1591	62
8	Bureau of Identification Cards	1592	62
9	Picture, Captioned "Jerry O'Connell With Communist Herbert Benjamin and Socialist David Lasser"	1592	63
10	Library Book Re Garland Fund	1592	63
11	Affidavit in the "New Masses"	1595	65
12	"Akron Times Press", May 27, 1938	1445	..
13	"Akron Beacon Journal"	1446	..
14	"American Republic Magazine" Re Dubinsky	1595	66
15	"Newark News", November 23, 1937, Item	1595	67
16	"Jersey Journal", Item of May 2, 1938	1595	69
17	Clipping "New York Times", May 24, 1937	1596	71
18	Clipping "New York American", March 9, 1937	1596	71
19	Clipping "New York Times", June 7, 1937	1596	71
20	Clipping "New York Times", March 29, 1937	1596	71
21	Clipping "New York Times", January 31, 1937	1596	71
22	Clipping "New York Times", January 15, 1937	1596	71
23	Clipping "New York Times", March 4, 1937	1596	72
24	Clipping "Herald Tribune", February 3, 1937	1596	72
25	Clipping "New York Times", April 24, 1937	1596	72
26	Clipping "New York Times", February 31, 1936	1596	72
27	Fish Report—Portions Identified	1590	73
28	Copy of Writ of Mandamus	1597	82
29	Copy of Return on Writ of Mandamus	1597	82

Tuesday, June 7, 1938.

Case continued.

Appearances as before.

THE COURT: Are you ready, Dean Frazer?

MR. FRAZER: Yes, sir. Mr. Ernst was examining Mr. Casey.

THE COURT: Oh, yes. I beg your pardon.

MR. FRAZER: Might I ask, before Mr. Casey goes on the stand, whether Mr. Hamill has had an opportunity of looking over the list of plants that I submitted to him, and whether he is willing to admit that they are located in Jersey City?

MR. HAMILL: If your Honor please, the evident purpose of this question, I am going to answer it, is to get something not into the record but into the newspapers; and that has been the trouble all through this case; that they succeed in getting evidence in, the Court permits it, then on reflection the Court strikes it out; then the newspapers have it. And that's the evident purpose, and his purpose was expressed in his words, that he wanted to paint the picture, and he doesn't care if he paints that picture according to the rules of evidence or not.

THE COURT: Mr. Hamill,——

MR. HAMILL: Had he seen me before this trial started, I would have given him all the information he wants.

THE COURT: Just a minute. I think——

MR. HAMILL: All but two plants, all but two of the plants are located in Jersey City.

MR. FRAZER: Thank you.

MR. HAMILL: Now, I hope that that will put a cease to this continual caterwauling and doleful and dismal nagging about that statement.

THE COURT: I think I only struck out one piece of testimony. I will verify that, though, if you want me to.

MR. HAMILL: There is the statement of everything except the Colonial Shoe Corporation, 2 High Street, that has moved away, and the Davis Baking Powder Company, and I think that has gone to Hoboken.

MR. ERNST: Thank you.

MR. HAMILL: Now, draw up a stipulation so that you won't charge me with bad faith in the newspapers; draw up a stipulation and I will sign it for you.

MR. ERNST: I understand the stipulation does not go to the extent of admitting that any of them are engaged in interstate commerce.

MR. HAMILL: No, merely for the fact that they exist in Jersey City.

DANIEL CASEY resumed the stand.

MR. ERNST: Your Honor, please, in regard to the subpœna duces tecum, Mr. Casey and Mr. Glavin made available to our representative, Mr. Britchie, what they said were the files in regard to applications. I am advised by Mr. Britchie that the total of the files consists of two bags of papers, two red folders, the total of the papers being about twice what would be in this bag. Under the circumstances it seems to me not reasonable to have us proceed without those papers being in court. I was led to believe that there were thousands of papers from Mr. Hamill's statement where he analogized the situation to bringing all the papers of the Register's office. Now I found there are probably less than two hundred pieces of paper alltold, all contained in two folders. I would like your Honor to instruct that they

be brought here because to a great extent our proof of discrimination and abuse of the statute, even if constitutional, rests on the absence of information in the files which we cannot prove without bringing them here.

THE COURT: Did Mr. Britchie go through the files?

MR. ERNST: Mr. Britchie went through the files.

MR. HAMILL: He had someone examine the files under the direction of the Court, and that was the disposition the Court made of the request made by Mr. Ernst.

MR. ERNST: Oh, no, I made no request to have them examined there; I issued a subpœna to have them brought here. Now, what the reluctance can be to bringing two bags in court I cannot imagine. There is no interference with the operation of the office because there isn't a constant flow of applications every day; it isn't like another office where we have to look back at the records, and I would like the records in court.

MR. HAMILL: If he is not entitled to the records he shouldn't have the records. He must then state why he wants it and why a representative, a lawyer I understand, from his office who called there would not be sufficient to give him the information he wants.

THE COURT: I suppose, Mr. Hamill, a party litigant in any case is entitled to anything that their subpœna calls for unless there is affirmative reason to the contrary. Now, as I understand it, the affirmative reason to the contrary on Friday was that there were too many records. That apparently was not the case. Now, of course, as I haven't seen the records I don't know whether——

MR. HAMILL: I didn't see them either, your Honor, I don't know what they are.

THE COURT: So that if they are only two small bags it seems to me they should be produced.

MR. HAMILL: Now——

THE WITNESS: I brought them here.

MR. HAMILL: It isn't because we don't——

MR. ERNST: Wait a minute. May I hear what the witness said?

THE COURT: He says he brought them here.

THE WITNESS: I brought what I showed your man yesterday.

MR. ERNST: Now, that stops that. May I have the bags?

THE COURT: Mr. Casey is not a lawyer——

THE WITNESS: No, I am not a lawyer and I don't profess to be.

THE COURT: He doesn't bother with these technicalities.

THE WITNESS: No, I don't; it is just a matter of routine.

MR. HAMILL: Now, what particular paper do you want out of those two bags?

MR. ERNST: I want all the bags and when it comes to introducing them in evidence it will be ample time for you to make an objection in due legal form.

MR. HAMILL: That is not the law, if your Honor please. He has no right to take the two bags and ask the Court to let him go on a fishing expedition. He must have something definite in mind. Let him tell the Court what he wants and the Court will rule on the question.

MR. ERNST: I will tell you the line of the inquiry, and it cannot be answered by calling for specific documents.

Number one: This witness under oath said that there had been no denials of permits back of, I think, 1936. He is mistaken. There were denials before then. He has said in effect that he knew of no applications for other than political or religious purposes. The records show that he is wrong, because he refused to permit for a peace meeting in 1933. The records contain evidence in respect to the denial of a permit requested on behalf of United States Senator Borah. We need not go into the hypothetical field of Ickes or Chief Justice Hughes, because the record is in the bag; the denial of the permit for Borah. The files show, among other things, that the Catholic Workers asked for a permit and we need the files to show what I may call the run-around given the Catholic Workers, and no denial. The American Civil Liberties Union asked for a permit. The files will show that the permit was never denied; merely delay, procrastination, and run-around. And I can go on, your Honor, on each item that will be found in the bag, including——

THE COURT: I think you will have to offer the evidence you want.

MR. ERNST: What is that, your Honor?

THE COURT: Offer the individual items that you want.

MR. ERNST: Well, let me have the bag.

THE COURT: I thought you just had it. Didn't you have it?

MR. ERNST: No, no. Mr. Hamill is declining to give me the bag.

MR. HAMILL: If that is what you want, and if you had told me and not been so frightfully secretive about purposes that need not be concealed, all this time would have been saved, Mr. Ernst.

MR. ERNST: If your Honor please——

MR. HAMILL: And your request would have been complied with.

MR. ERNST: I will tell the reason for my secretiveness. I do not trust the keeping of the records, and I wanted to make sure that they would not be doctored before they were in court. That is my reason.

MR. HAMILL: Well, if your Honor please,——

MR. ERNST: Have I reason for it? Yes. That will be brought out. I have reasons for it. I will ask this witness questions.

MR. HAMILL: And you are going to bring that out?

MR. ERNST: I will bring out the basis for my suspicion.

MR. HAMILL: And you are going to prove that, or have it stricken from the record?

MR. ERNST: I didn't say I was going to prove or do anything, nor do I want you to understand that I am limited in the course of my inquiry now in respect to Borah and other points I mentioned.

MR. HAMILL: Has counsel a right to stigmatize the records of a municipality unless he has proof to back up his charge?

MR. ERNST: You asked me, didn't you?

THE COURT: Where are they, Mr. Hamill?

MR. HAMILL: I asked you——

MR. ERNST: Let me have the bags.

THE COURT: The Commissioner said he had them. Where are they?

MR. ERNST: The Commissioner is willing. He brought them here. Let's stop this——

THE COURT: Where are the bags, Mr. Casey?

MR. ERNST: I want the two bags, where are they?

THE COURT: Are those the ones?

THE WITNESS: I think they are over there.

MR. ERNST: This is all there is?

By MR. ERNST:

Q. Now, I ask you, Commissioner, are these documents plus those which you brought to court when you were last on the stand, all of the documents relating to applications for permits, whether denied, held in abeyance or granted, during the last three years?

A. I couldn't tell you about the last three years. I wasn't Director of Public Safety for the last three years.

Q. Can you say that these are all the instruments which relate to such time as you were in charge of that office?

A. Yes, to the best of my recollection.

Q. Who would have a better recollection than you? Your secretary, may be?

A. No, my secretary—he notifies me about it; he files them when they come in.

Q. There is nobody in your organization that would have a more direct answer they could make than you?

A. No.

Q. In respect to whether these are the instruments?

A. I am responsible for them.

Q. And there is nobody in your office that could be sure that these are all the files?

A. Well,——

Q. You say it is to the best of your recollection. I just want to know if there is anybody else that might have a better recollection.

A. Well, they are filed by my secretary and the men in the office, and so——

Q. Your secretary is in court, is he?

A. No, he is not.

Q. What is the name of your secretary?
A. Walter Daly.
Q. Walter Daly.

MR. HERSHENSTEIN (as Mr. Ernst hands documents to associate counsel): Just a minute, please.

MR. ERNST: If your Honor please, I think it will save time to have one of my associates——

MR. HERSHENSTEIN: I know, but——

MR. ERNST: Just a minute. Let me finish my statement. I think it will save time to have one of my associates go through the bag. If the Court prefers, we can let the witness sit here while I look them through. It is entirely a matter of convenience and respect for the Court.

MR. HAMILL: Oh, I think that counsel cannot take it and just turn it over to his office, as it were.

MR. ERNST: My associate counsel, Mr. Fraser, will look them over, to save time.

Do you want me to hold the witness while I look them over?

MR. HAMILL: I beg your pardon?

MR. ERNST: Do you want me to go on and hold the witness while I am looking them over?

MR. HAMILL: Yes.

THE COURT: You don't have to sit there, unless you want to.

THE WITNESS: It is immaterial to me, your Honor.

MR. HAMILL: Maybe the Commissioner will find them for you, if you ask him.

THE WITNESS: Yes, I will be glad to help you, if I can.

MR. ERNST: No, he can't find what I am looking for. We are trying this case.

MR. HAMILL: Why? Have you padded the record yourself?

MR. FRAZER: In this little lull, it might be an opportune moment to suggest to the Court that ordinarily in the examination of a witness there is only one counsel on either side. On Friday there was one occasion when three defense counsel were making objections and speeches at the same time; and I am wondering whether the Court might not suggest to counsel that only one indulge in cross-examination.

MR. HAMILL: Isn't that a matter for the Court to decide in each particular instance? The Court has the power to bring down the gavel and stop counsel at once, and I have seen the Court exercise its power in that respect.

THE COURT: You never saw me use the gavel, Mr. Hamill.

MR. HAMILL: Well, I have seen your Honor sternly bid a counsel to be seated, and he took his place, as he should.

THE COURT: I think I can manage all right.

Q. Mr. Casey——

A. Yes, sir.

Q. I want to clear up a point on the record. I understood you to testify that there were no printed forms in connection with the issuance of permits. Is my recollection correct as to your testimony?

A. I don't think so.

Q. Well, what are the facts as to the types of forms used for permission for meetings?

A. They issue a form with a duplicate attached. I think you have got a copy of the stub of the permit there in your hand.

Q. I show you a form and I ask you if that is the form that was used in connection with street-corner permits?

A. That was.

MR. ERNST: I would like to have it marked for identification.

(Marked Exhibit P-14 for identification.)

THE COURT: May I see it?

(Exhibit P-14 for identification handed to the Court.)

THE COURT: This is the granting, isn't it? This isn't the——

THE WITNESS: That is not the application, no. That is an order that I got from the Commissioner's office for it.

THE COURT: Yes, this is the granting of the permit.

THE WITNESS: To issue that permit, to give them —that was held in the Chief of Police's office before I went in as Director of Public Safety. We were notified by the Director of Public Safety's office to issue a permit, which we did give them, that permit.

Q. Was there a stub in connection with that form, in evidence?

A. I think the stub is on it. That was all filed in headquarters. I got that from headquarters. I done everything that I could to satisfy you.

Q. Very nice, thank you. I noticed on this form marked for identification that there is a statement there in regard to permits for issuing circulars. Is that right, Mr. Casey? Will you just read it? It says, "City Police Department, headquarters. To whom it may concern: Permission is hereby given to (name) (address)" and then it says "to sell or canvass, to distribute samples or circulars, to hold parades or meetings, to solicit and take orders."

Is that what the form reads?

A. Yes, sir, that is what it reads, but they never issued any permits to give out circulars, had no right to do it under the city ordinance; I couldn't give it if I wanted to, never issued orders for them to be given out. That circular, that printing matter I am not responsible for.

Q. So whoever had this printed up did it in disrespect for the law, is that true?

A. Well, I am only accountable, counselor, from the time I have been Director of Public Safety.

Q. I didn't ask you that. Answer my question.

A. I am trying to.

Q. Let's start over again. I didn't ask you anything about accountability, never referred to it. I asked you just one question: Whoever did have it printed up had it printed in disrespect of the law?

MR. HAMILL: Oh, that's a legal question; your Honor will decide that.

A. I think that that is scratched out there, isn't it scratched out?

Q. I didn't ask you whether it was scratched out; I can see whether it is scratched out.

A. Just a minute now. Why can't you be fair?

Q. Can't you answer my question?

A. I am trying to, not the way you want me to.

Q. Just yes or no.

A. I am trying to answer it fair.

Q. Just yes or no.

A. I am not going to answer it yes or no without my explaining. I think my constitutional rights gives me the right to that.

Q. You are claiming no privilege outside of your constitutional rights?

A. Well, I am claiming privilege, too.

Q. Oh, you are. Get that on the record.

A. Certainly, that is my privilege.

Q. I ask you whether this form was in your opinion printed with reference to distribution of samples and cir-

culars without respect to any law that gave you the power to issue such circulars.

A. Well, I won't say that.

Q. Well, what would you say in respect to the form as to circulars?

A. With reference to circulars it was wrong, it was printed wrong.

Q. That's all.

A. That is my honest opinion.

Q. Right. Now, these permit applications granted slips were not always used for all meetings, were they?

A. To the best of my knowledge I think so.

Q. I want to show you from your office some slips entitled "Pawnbrokers' descriptive sheet" and ask you——

A. Well, that got in there wrong, I think; that is something that had no right in that envelope. That has nothing to do with this case, I don't think.

Q. If you will just wait a moment—you don't want to make statements that aren't true, because these are also stated on the other side "Gospel permits."

A. That's all right, they were——

Q. Will you look at this exhibit and tell me whether it represents permits for meetings allowed.

A. Yes, they do.

MR. ERNST: I will mark this for identification.

THE WITNESS: Could I explain that to you, counselor? Don't you think——

Q. I will ask you my own questions; your counsel have ample time to ask you questions.

A. All right. Thank you.

(Marked Exhibit P-15 for identification.)

Q. We will proceed much more quickly if you will just answer my questions, we will get through in a few hours.

A. That is what I am trying to do.

Q. As to this Exhibit P-15 for identification, I ask you whether you want to change your answer that there were

always forms of permits granted handed out along the lines of the previous exhibit.

A. Well, I would like to set you right on that. As far as those permits, they are not issued from my office, haven't been issued from my office. They were handled by Lieutenant Mahoney in the Bureau of Identification in the record room. He is the man has charge of those permits and they were issued from his office. He had the privilege of doing that under the former directors of public safety.

Q. And when did you become Director of Public Safety?

A. I think it was—I was elected on the 10th, I think it was, and on the 18th I was sworn in.

Q. Of what year?

A. 1937.

Q. And the month?

A. May.

Q. May. So I take it your explanation is that until you were in office the Director of Public Safety did not always issue the permits but somebody in the Police Department did.

A. It was routine work.

Q. Now I show you your Exhibit P-10 for identification and ask you whether or not the instrument does not show that on August 1, 1933, an application for the United Front Anti-War Committee for a meeting at Claremont and Jackson was denied.

MR. HAMILL: What was the year, Mr. Ernst?

MR. ERNST: 1933.

A. Yes, that 's right.

Q. Do you know whether or not there is any document, piece of paper of any nature, in the files of your office indicating the reason for such denial?

A. No, sir, there is not.

Q. There is not. Now, I ask you in respect to the application of Saturday, August 26, 1933, of the Scottsboro

Committee for a meeting at Jackson and Orient Avenues, whether or not that was not denied.

A. It says so; if it says so it is true.

Q. All right, I just want to make sure it is true. Now, is there any piece of paper or instrument, written, printed, or typed, in the files of your office indicating the reason for that denial?

A. No, sir, there is not.

Q. You would say that both of those meetings were denied on the ground that they might creat public disturbance?

A. Most likely; I don't know why they were denied; I wasn't Director of Public Safety at the time.

Q. I want to ask you about the words "most likely." Is there any other reason for which they were denied?

A. I couldn't tell you.

MR. HERSHENSTEIN: He has testified he was not Public Safety Director at that time and doesn't know.

Q. I am asking the Commissioner the question because the law, even if it is constitutional, only gives on basis for denial and I am asking the Commissioner whether there is any possible other basis for denial, because he said "Most likely."

A. I don't know the basis for denial.

Q. But you do know that the only legal basis under the ordinance is possible disturbance?

A. That's right.

MR. HERSHENSTEIN: I object, your Honor please, what he knew at that time in 1933.

Q. Now, Commissioner, do you know about the denial of a permit for United States Senator William E. Borah to speak at Jersey City in May of this year?

A. I don't know a thing—this year?

Q. This year.

MR. HAMILL: Your Honor please——

MR. ERNST: Just does he know about it.

A. May of this year?

Q. May of this year; do you know about it?

A. I don't know a thing about it.

Q. You don't know a thing about it?

A. To the best of my recollection this is the first time I think I heard it.

Q. And if a permit for William E. Borah had been requested and denied, no one in your office had authority to deny it other than yourself, is that right?

A. That's right.

Q. Now, I want to show you a telegram addressed to Daniel Casey, by J. Harlan Cleveland, vice-president American Whig Cliosophic—C-l-i-o-s-o-p-h-i-c—Society, dated May 10th, together with purported copy of letter written on the stationery of Department of Public Safety, with typewritten underneath it "Director," addressed to the same Mr. Cleveland, together with two extra copies of the same letter, and ask you if you will look at those instruments and tell me whether or not those refresh your recollection.

A. They do but—just a minute. Could I answer that was not a request from Senator Borah.

MR. HERSHENSTEIN: Is this the telegram which you say constitutes the application for a permit for Senator Borah, is that right?

MR. ERNST: I just want to know now whether this refreshes his recollection.

THE WITNESS: It does.

MR. ERNST: Now I want to mark this for identification.

THE WITNESS: Just a miinute, I want to explain it.

Q. I will explain it.

A. Just a minute. That wasn't from Senator Borah.

THE COURT: That will be in evidence.

Q. I said it wasn't.

A. It was a very tricky question you asked me.

Q. I said it was the American Whig Cliosophic Society and I spelled the name.

Q. You didn't, you said from Senator Borah.

Q. And I spelled the name.

A. You said it was from Senator Borah. That's the way I understood the remark from you.

MR. ERNST: I ask it be marked for identification.

(Marked Exhibit P-16 for identification.)

THE COURT: May I see it?

MR. ERNST: I would like to read this into the record, if I may, your Honor.

THE COURT: I would like to see it first.

MR. HAMILL: We object to the reading of any of these into the record.

MR. ERNST: I offer it in evidence.

MR. HAMILL: I object to it being offered in evidence, it is merely used to guide counsel in cross-examination.

THE COURT: It may be offered in evidence.

MR. HAMILL: Your Honor will grant me an exception?

(Which exception is hereby alowed and sealed accordingly.)

(Sealed)

(Received and marked Exhibit P-16.)

MR. ERNST: Now, having offered it in evidence, your Honor, I shall read it into the record. The telegram reads as follows: "Daniel Casey, Room 27, City

Hall" with a rubber stamp notation "Received by the Department of Public Safety May 10, 10 A. M. 1938."

The telegram reads: "We request permit for speech by Senator William Borah, sponsored by American Whig Cliosophic Society of Princeton University, date Thursday evening May 12th at 9 P. M. Journal Square. Please wire reply by Western Union collect as soon as possible to Whig Hall, Princeton," signed J. Harlan Cleveland, V. P., American Whig Cliosophic Society.

The answer reads: "Department of Public Safety, May 1, 1938, addressed to Mr. Harlan Cleveland, Princeton, New Jersey, Dear Sir: I have your telegram in which you request a permit, I assume for an outdoor meeting to be sponsored by your society for Thursday evening, May 12, 1938, at 9 P. M., at Journal Square, Jersey City. I have made an investigation of the facts and circumstances pertaining to this application and believe it to be proper to refuse the issuance thereof. Your request for a permit therefore is denied on the ground that the said meeting would tend to create disturbance and disorderly assemblage. Yours truly, Director."

Q. Now, I ask you, Mr. Casey, did you sign that letter?

A. If I see the original letter I can tell you. I told you Friday that I gave my secretary the authority to sign my name.

Q. Will you testify whether or not this letter was sent out by you, copy being in your files?

A. Yes, it was sent by me.

Q. Now, Commissioner, how many police have you got in Jersey City, total in the police force?

A. Well, around nine——

Q. Approximately.

A. Nine hundred; everybody in the department, cleaners and everybody else. I cannot say definitely right to the very number.

Q. It is approximately nine hundred?

A. Around that.

Q. Do you know whether or not that is not the largest police force in the United States for any city of a population the same as Jersey City?

A. It is what?

Q. The largest police force in the United States?

A. It is the largest police force, you say?

Q. In proportion to population; do you know whether that is true?

A. I have never gone into that. I know that we have the cleanest city in the United States.

Q. Did you hear me ask you anything about that?

A. Well, I am just telling you why we need the police.

Q. Just want to make a speech.

A. No, I think you are trying to make a speech.

Q. Now, will you please wait to talk cleanliness until your attorneys ask you?

A. Thank you.

Q. It won't help you at all, it just wastes time.

Now, I take up with you telegraph denying to the Princeton society the right to have Borah to speak, that you believed that there would be a disturbance in Journal Square?

A. I know that Senator Borah wasn't going to talk there; it come out in the papers before I sent the letter, I think that his name was mentioned without his authority, if I remember rightly, like several others whose names have been mentioned where they had no authority to send their names in.

Q. Commissioner, I want to ask you whether or not you didn't advise that you wouldn't allow the speech because of the fear of disturbance; is that a fact?

A. Correct.

THE COURT: Who is Mr. J. Harlan Cleveland, does anybody know?

MR. ERNST: J. Harlan Cleveland is described in the papers——

THE WITNESS: He is a student at Princeton.

THE COURT: Is he president of the fraternity?

MR. ERNST: Vice-president of the American Whig Cliosophic Society.

Q. Now, in regard to the possible disturbance if Senator Borah spoke, and we will get to the question of whether he was coming or not, in regard to the disturbance, did you have any protests from anybody against Senator Borah speaking?

A. I don't remember.

Q. You don't remember. Do you know whether or not there was a single piece of paper with a written or printed protest in the entire files of your office, indicating that anybody objected to the right of Senator Borah under the Whig Society to speak in New Jersey?

MR. HERSHENSTEIN: Now, if your Honor please, the witness has stated that he has investigated and found that Senator Borah was not to be the speaker, and for that reason he probably made no investigation as to Borah.

THE COURT: I didn't understand that Senator Borah had made an application. Did you receive an application from Senator Borah?

THE WITNESS: Senator Borah never made an application to me for a permit to speak.

MR. ERNST: If your Honor please, the questioning I am conducting is entirely proper, for this basic reason: with the situation in Jersey City, where nobody knows who will be allowed to speak or not, there is no use in developing a multiplicity of complaints and suits. The orderly procedure is to find out whether or not

Casey will approve of Borah before you even get Borah on a date.

MR. HERSHENSTEIN: Well——

MR. ERNST: And we will tie that up with a long line of applications, of changes of dates, of delays, of procrastinations, of run-arounds; and so there is no use of getting people for a date and then have him drag you over the date.

MR. HERSHENSTEIN: You are speaking to the newspapers?

MR. ERNST: I am speaking to your question as to the propriety of my inquiry, because this man thinks Borah wouldn't have come.

THE COURT: What did you do, Commissioner——

MR. HAMILL: Your Honor, that isn't——

THE COURT: Just a minute. What did you do after the receipt of that telegram, do you remember?

THE WITNESS: Offhand, no. I saw an article in the paper before it was answered that Senator Borah told this society at Princeton that he wasn't coming. That's all very technical, your Honor. Senator Borah —I would never refuse Senator Borah as an individual a permit to speak. I didn't receive that from Senator Borah.

MR. ERNST: If your Honor please, I want to ask the witness this question:

Q. Do I understand, and you have so indicated, that if the American Civil Liberties Union files an application for Senator Borah to speak in Jersey City, at a convenient place in relation to traffic, the permit will not be denied?

A. Just a minute. When I come to that bridge I will cross it.

Q. I am asking you, because you said you would never deny the right to Senator Borah to speak.

A. As an individual, no.

Q. Now then, I want to ask you this, whether or not a particular man is going to be allowed to speak and whether or not there will be disturbance whether a particular man speaks or not depends on the auspices of the organization under which he is speaking?

MR. HERSHENSTEIN: He didn't say that.

A. No——

THE COURT: No, he is asking him.

MR. ERNST: I am asking the question.

THE WITNESS: Do you want it read?

Q. It must be one or the other.

MR. HERSHENSTEIN: Oh, it does not have to be one or the other, sir.

A. I told you that when that presents itself to me I will act accordingly. I don't believe in crossing a bridge until I come to it. I told you that before.

Q. But, Commissioner, I didn't cross your bridge.

A. Well, you are trying to make me cross it before I come to it.

Q. Commissioner, you crossed it when you said gratuitously to the Judge, and we will have it read back if you want it——

A. No, that's all right. I know what I said.

Q. (Continuing.) —that you would never deny an application for Senator Borah.

A. No, I wouldn't, as an individual, no.

Q. As an individual?

A. Because I don't think that Senator Borah goes out having circuses.

Q. All right.

A. Nor to perform circuses.

Q. Now, I want to ask you this: you would never deny him an application as an individual?

A. No, sir; I would not.

Q. Again I ask you, you mean that you might deny him an application under the auspices of certain organizations?

A. I told you I would consider it and when I come to it I would cross it.

Q. I want to ask you this: Do you know of any circumstances under which you might possibly deny Senator Borah the right to speak in Jersey City?

A. I guess——

MR. HAMILL: I object.

THE COURT: Let him answer.

MR. HAMILL: I object. He cannot answer that. He must take each actual situation as presented to him and pass upon it. Now, this is not helpful to the Court, asking a policeman to tell what he might do under a certain set of circumstances. He might run up to the law department, and he doesn't know what he would do.

MR. FRAZER: Might I call the Court's attention to the fact that two counsel are now defending one witness.

MR. HAMILL: And three, when you talk.

MR. ERNST: If your Honor please, we must continue this line of inquiry, because this man is operating under an ordinance that gives him discretion, and we must have the right to determine the use of discretion in relation to applications and other material; and my question is, is there any possible situation where you would deny an application for Senator Borah to speak in Jersey City?

A. I told you, Senator Borah making an application under an organization not his own personal application, I would handle it the same as I would any other application from any other organization.

Q. Now does that mean——

A. And I would express my opinion after I received that application.

Q. Does that mean that there are certain organizations whose applications, no matter who the speakers——

A. It don't make a bit of difference.

Q. (Continuing.) —are denied?

A. What is that?

Q. If you will please let me finish my question.

A. I am trying to.

Q. It will take days this way, Commissioner.

A. All right.

Q. Does that mean that there are certain organizations whose applications for permits for speakers would be denied irrespective of the speakers?

A. Applications of organizations where they are apt to cause disturbance, bloodshed, riots and maybe murder, would be denied.

Q. I am going to ask my question again: Are there any organizations whose applications for permits for speakers would be denied, irrespective of the speakers? Will you try again to answer that?

A. Now what is that again?

Q. I will give it again.

A. Yes.

Q. Are there any organizations that you know of whose applications for permits for speakers would be denied irrespective of the speakers for whom the permits are asked?

A. I have denied them already.

Q. Now what are the organizations?

A. I guess you have the applications there.

Q. Well, now——

A. You have the applications. If you will let me see them, they will refresh my memory.

Q. All right. Will they be here? Two of them are here, aren't they?

A. I don't know anything about those two; I told you if they are denied they are marked up there "denied."

Q. Do you know of any applications denied other than the CIO and the National Civil Liberties Union? Here is the file. Will you look through and see if you can find another one?

MR. HERSHENSTEIN: That does not show it. You would have to refer to your other file, Mr. Ernst.

MR. ERNST: What? Will I? (Another file handed to the witness.)

THE COURT: I can give you one, because it is in a reported case; The American League for Friends of New Germany, of Hudson County. That was not for a public meeting; that was for a private meeting.

MR. HERSHENSTEIN: May I have this?

MR. ERNST: These are my papers.

MR. HERSHENSTEIN: May I have that?

MR. ERNST: I will hand them to you, Mr. Hershenstein.

MR. HERSHENSTEIN: All right.

THE COURT: You object to my citing things, Mr. Hamill, so I don't know whether I should cite this case to you or not. I will anyhow; 116 New Jersey Equity, page 487.

MR. HAMILL: I am only going to call your Honor's attention to the fact that the Court takes judicial notice of these things, and your Honor doesn't have to put them down on the record.

THE COURT: You won it.

MR. HAMILL: Your Honor is familiar with them.

THE COURT: You won it.

MR. ERNST: If your Honor please, while the witness is looking over the papers, may I indicate that the files

as now presented do not contain all of the documents. There is another bag which is the second bag that I referred to, which contains the so-called letters of protest, of which our representative indicated that there were one hundred approximately, all told. I would like to have in court as soon as possible the other file. I have just gone through this and find that these are not all the papers, even so testified to.

MR. HAMILL: Mr. Ernst, how do you know that? Did you examine the——

MR. ERNST: Mr. Britchie, of our office, of the Civil Liberties Union, a lawyer, went over there. He dictated a report, which indicated that he examined and saw the protests, and Mr. Glavin with him indicated that there were some protests, and that they did not number more than one hundred all told, in the entire files of the office.

MR. HAMILL: Is Mr. Britchie here?

MR. ERNST: Mr. Britchie is not here. I ask that the subpœna be lived up to. Let's stop this nonsense of Mr. Britchie.

MR. HAMILL: Well, I didn't bring in Mr. Britchie. He is evidently an important gentleman, because you quoted him very much at length.

MR. ERNST: I tried——

MR. HAMILL: And I wanted to know if we could have the benefit of his information obtained at first hand instead of your hearsay recital of it.

MR. ERNST: If your Honor please, I tried to accommodate Mr. Hamill on the theory that there were a lot of papers, and it would result in inconvenience to the office. I feel that I have been deceived——

MR. HAMILL: You did not try to accommodate me. You tried to get them and I objected and the Court

determined how the information should be gotten. Now let us start off correctly.

MR. ERNST: From my point of view it was an accommodation, because I stand on my legal rights under the subpœna.

MR. HAMILL: I distinctly——

MR. ERNST: I now ask that the subpœna be enforced. There is an envelope of so-called protests. We must have them. We intend to tie them up, not only with this witness as to inspiration, but on the evidence of discrimination.

THE COURT: Has it disappeared?

MR. ERNST: It is not in court. They handed me bags purporting to be all the papers.

THE COURT: What is the other one? What is the other one?

THE WITNESS: The other one is not here, your Honor.

MR. ERNST: I have all the papers they handed me.

THE WITNESS: I wasnt there, if I can explain.

THE COURT: Yes.

THE WITNESS: When this gentleman come to my office yesterday, I was very busy, and I done everything I could for him; turned them over to Judge Glavin and my secretary, Lieutenant Daly. I instructed them to give that gentleman anything he wanted to take a copy of. He looked at the applications of denial and he told them, the way I understood it, I might be wrong, that he didn't want them; if they had wanted them here, I would have brought them here this morning.

MR. ERNST: Then, if your Honor please, there is no dispute between the witness and myself. Will you kindly ask to have them sent?

THE COURT: Will you have them brought over then?

THE WITNESS: Why, certainly.

MR. ERNST: Will somebody telephone for them right away, because they tie up with all the rest of the examination?

(Mr. Hershenstein spoke aside to an associate.)

MR. ERNST: Let's have them all this time, so we won't have to go back again.

THE COURT: Will they know where they are?

THE WITNESS: Yes; they are just the protests that come to my office. There is barrels of protests——

MR. ERNST: May I just save time, before you go to telephone; do I understand that now a message is being sent over to bring over the papers of protest and all other documents relating to applications?

MR. HAMILL: Suppose you write it out on a sheet of paper.

MR. ERNST: I have just dictated it.

MR. HAMILL: I know, but how——

MR. ERNST: The protests and all other documents relating to permits for outdoor meetings. It seems to me very simple. You can take a copy of the——

MR. HAMILL: All right. You convey that message. I hope you don't forget it on the way over. It is very simple. I suppose you won't.

Q. Now, Commissioner, will you continue to look through——

THE WITNESS: I would like to ask his Honor a question, if you have no objection.

MR. ERNST: Not at all.

THE COURT: Go ahead, go ahead.

THE WITNESS: There is protests in my office; I know that there is protests in the Mayor's office; I think you had better get them all while you are about it and bring them all here. There is not a hundred but there are hundreds of them, to the best of my recollection.

THE COURT: Well, if you will tell us where they are, we will get them. Has that gentleman gone?

MR. HAMILL: He has gone.

MR. ERNST: I would like them all, your Honor.

MR. HAMILL: Shall I call him back, your Honor?

MR. ERNST: Yes, please.

THE COURT: Yes, get them all.

MR. ERNST: I would like them all; every one of them.

MR. HAMILL: All right; I will take care of it myself.

MR. ERNST: He is our witness, and we want to use them

Q. Now, Commissioner, will you continue to look through——

A. Here they are, I think, to the best of my recollection.

Q. These papers that you indicate are the denials of permits to organizations?

A. I think so.

Q. Is that right?

MR. ERNST: Without encumbering the record, may I just read these with you——

THE WITNESS: Yes.

MR. ERNST: —rather than marking them all?

One of them is an application of Jeff Burkitt and Vincent——

THE WITNESS: Vincent Finoy.

MR. ERNST: Finoy, dated April 12, 1938, for a meeting on April 16th.

THE WITNESS: Yes, sir.

Q. That was denied?

A. Yes, sir.

Q. Here is another application for Jeff Burkitt, April 19, 1938, denied on April 22d.

A. Right.

Q. Both denied on the basis of possible disorder?

A. That is it.

Q. Here is an application of the Independent Speakers Association, 2 Lafayette Street, New York City, dated May 9, 1938, indicating that this organization has on its speaking platform such prominent citizens as Thomas E. Dewey, Fiorella LaGuardia, Newbold Morris, Joseph E. McGoldrick, and others, of equal renown. "Most of the members," the application says, "in our organization are independent Democrats and independent Republicans. We are not affiliated with any political parties."

They wanted the application for the purpose of discussing freedom of speech as guaranteed by the Constitution, and they asked for the permit for May 19th, or May 20th; that was denied in a letter dated May 10th?

A. Yes, sir, for the same reason.

Q. For the same reason. An application of Socialist Labor Party. That is a political party?

(The witness nodded.)

Q. Is that a political party?

A. It is, yes.

Q. It is. Application May 23d, 1938, indicated that verbal applications had been made for various addresses.

This written application was denied by you—no, I will withdraw that. On May 4, 1938 you addressed a letter to Nicol Gerold, who I take it is connected with the Socialist Labor Party——

A. Yes, sir.

Q. Asking him to indicate the list of speakers who are to address the meeting. You also wanted to have a list of the officers of this Socialist Labor Party, and you wanted to have the application presented in person, is that right?

A. Yes, sir; if it is in there, it is right.

MR. HERSHENSTEIN: Please complete it. So that he may investigate the same.

Q. So that you may investigate the same.

And that meant that your investigation would be aided by knowing the names of the speakers and the lists of the officers?

A. Yes, sir.

Q. And that permit was denied on April 27th?

A. Yes, sir.

Q. Here is an application of the Hudson County Committee for Labor Defense and Civil Rights—I will withdraw that.

MR. HERSHENSTEIN: If your Honor please, just a minute, Mr. Ernst. I think that is an oversight, but annexed to this application of the Socialist Labor Party in which Commissioner Casey requested the names of the officers of the association and the speakers and desired investigation, he then said it was denied on April 27th. April 27th is the denial of a different permit entirely. I think it is attached through error. May the record show——

MR. ERNST: I would like the record to indicate that the file was jumbled and attached in error, and I now ask the Commissioner what happened to this application of the Socialist Labor party?

MR. HERSHENSTEIN: Did you get a reply to this, Commissioner?

THE WITNESS: I don't remember.

Q. You don't know what happened to this application?

A. No, I don't. That application, I don't know whether there was a reply to my letter or not.

Q. See if we can simplify this one.

A. What is that, in reference to this one? I think it is in here.

MR. ERNST: Your Honor please, I want to correct the record as to the application of the Socialist Labor Party meeting previously referred to, as I now find elsewhere in the papers what purports to be the denial of the right of the Socialist Labor Party to hold open air meetings May 14th and May 21st at Lincoln and Central Avenue and Orient and Jackson Avenue.

MR. HERSHENSTEIN: Wait a minute, I don't think that is a denial; that is not a denial. Read it. That is a reply evidently to the request of May 4th asking for further information. Evidently that was written in compliance with the request for information.

MR. ERNST: No, I have two letters dated May 4, 1938, both addressed to Nicol Gerold. As I read these letters, they are identical in wording but these two copies of letters do not conform.

Q. Will you explain whether you wrote two letters to this man or whether these copies were made at different times and how it is that two carbon copies do not happen to come out the same typographically?

MR. HERSHENSTEIN: They are identical, aren't they?

MR. ERNST: They are not identical at all.

MR. HERSHENSTEIN: I mean the language is identical.

MR. ERNST: The language is identical, the words are identical.

A. I can explain why that is; it is an extra copy and it must have been run off as an extra copy.

Q. Later?

A. Later, before the letter went out.

Q. Now, did you receive an application from William Kane Tolman of the Socialist Party for street forum on April 30, 1938?

A. Do you mind letting me see that?

MR. HERSHENSTEIN: The question is, pardon me, did you receive an application from Mr. Tolman. What is your answer to that?

THE WITNESS: On when?

Q. First I want to know if you received it and then if you will read the date into the record.

A. I received one here, I guess there is another letter there; this is mixed up on this here.

MR. HERSHENSTEIN: I think we can admit for the record, Mr. Ernst, that an application was made. We don't find the original application.

Q. And can you give me the approximate date of the application?

MR. HERSHENSTEIN: It would be prior to around April 27, 1938.

THE WITNESS: Around 10 P. M. April the 22d.

Q. April 22,

A. I think that is what it is.

Q. And what is the date of the denial of the meeting for the Socialist Party which was made around April 22 that you have in the letter?

A. Well, he asked for to hold this date of April the 30th; it is right here.

Q. No, I didn't ask the date when he wanted to hold the meeting, I asked the date of your denial. Will you read that into the record?

A. I denied it on the 27th.

Q. Now, the Socialist Party of Hudson County asked for a permit around May 17, 1938.

A. Yes, sir.

Q. What happened to that application?

A. Denied.

Q. On what date?

A. May the 10th.

Q. Now, I ask you whether you received an application from the Catholic Worker dated May 3, 1938, to speak on Friday, May 6th, indicating that if there was any objection to the choice of the place the place could be changed, and asking for the right to speak on May 14th, indicating that the meetings will be educational explaining the Papal Encyclicals. Is it a fact that that application was received?

A. Yes, sir.

MR. ERNST: I would like to offer in evidence the application in writing, telegraphic, signed by William N. Callahan, Managing Editor of the Catholic Worker.

(Received and marked Exhibit P-17.)

Q. I ask you, Mr. Casey, to look at the only correspondence I can find in your files on the subject and tell me what happened to that application?

A. Do you want me to read it?

Q. No, I don't want you to read anything; I want you to tell me what happened after that application came in.

A. I don't think that I received any other communication from him; if I did it is in the files there.

Q. Let us take it simply: Did you read the application when it came in?

A. I did.

Q. Did you communicate with the applicant, the Catholic Worker in regard to the application?

A. I sent a letter to William Callahan of the Catholic Worker.

Q. Now, the letter in effect indicates that you want the applicant to come in in person, you want him to list those who will address the meeting, also to supply you with a list, if any, of the officers or executives of the newspaper that you say you edit so that you may investigate, is that right?

A. Right.

Q. Now, what happened after that?

A. That's the last I heard about it to the best of my recollection.

Q. What's that?

A. That's the last I heard about it to the best of my recollection.

Q. You don't know whether or not—careful on this—whether or not Mr. Callahan of the Daily Worker came into your office in response to your request?

A. If he did he didn't see me.

Q. And if he did it was never reported to you?

A. I didn't hear a thing about it.

Q. Will you describe very briefly the appearance of your secretary, is he a tall man or a short man?

A. My secretary is a man six feet tall.

Q. That's enough, that identifies him. You don't need to waste time in the record.

Now, as a matter of fact you neither denied nor granted the permit of the Catholic Worker, is that right?

A. Offhand I couldn't say; I might have denied it but I got no copy of it.

Q. If you denied it would there not have been a letter in the file?

A. I should have a letter in the file, yes, sir.

Q. In other words, your denials are invariably in writing, aren't they?

A. Mostly, sometimes they are verbal.

Q. Sometimes they are verbal. Will you name me one in your entire history that has been verbal, just one. I don't want a lot of them, just one, to give me the type.

A. I can't remember.

Q. Well, are you really sure that you ever denied one verbally?

MR. HERSHENSTEIN: Do you mean ever or in this case?

Q. Ever. I am giving him carte blanche to name one out of hundreds. Do you remember a single one?

A. No, I don't remember.

Q. Now, are you sure?

A. I am not certain, I won't be certain on anything that I don't think is right. If I am certain of something I will say I am certain, but if I am not I won't say it.

Q. That's right and that is why I want you to be very certain before you say that you denied permits verbally. I want you to be very sure because you want to be right.

Now, are you still sure that you denied permits verbally?

A. I told you that I don't remember, I might have.

Q. You might have. Now, on this Catholic Worker application did you have any information or evidence upon which you would either grant or deny that application?

A. On circulars.

Q. I am not talking about circulars, I am talking of that application.

A. What's that?

Q. I am talking of this particular application.

A. I am talking about that application. They were handing out circulars which I had seen one before that application was made.

Q. And that might have been a factor in your denying the permit?

A. It might have, yes. I couldn't tell you offhand.

MR. HERSHENSTEIN: Of course, the witness doesn't remember that he denied it.

A. I didn't say I denied it.

Q. I didn't say you did either. I said it might have been a factor in the denial.

A. It might have been if I did deny it. I don't think that I received any more communications from the gentleman.

Q. All right. I show you application Hudson County Committee for Labor Defense and Civil Rights and ask you whether or not this application wasn't made for a permit to hold a meeting at Pershing Field Friday, May 27, the sponsor to be Representative O'Connell.

A. Yes, sir, that was.

Q. And the application indicated that Pershing Field was chosen as a place "which will not interfere with the trade of our townspeople." It further went on to say it was an organization composed of Hudson County groups, solicitous of the business and welfare of Jersey City. Right?

A. Right.

Q. What happened to that application?

A. My answer is there I denied it on the same grounds, disorders and riots.

Q. Now, in addition to denying the permit you went on and wrote a letter saying that these applicants could not be very solicitous about the business and welfare of Jersey City, is that right?

A. Yes, sir, if it is there I said it.

Q. Is it there?

A. It is.

MR. HERSHENSTEIN: Don't you want to read any more of it?

MR. ERNST: No, you can read all you want.

MR. HERSHENSTEIN: I thought you might want to.

MR. ERNST: All I want to get in——

MR. HERSHENSTEIN: I understand.

MR. ERNST: You can read it all, perfectly happy to have you do so.

Q. There was an application from Congressman O'Connell personally to Mayor Hague under date of approximately May 9th, is that right, the application being in telegram form?

A. Yes, sir, that is my answer.

Q. And the answer in effect is a denial of the meeting?

A. Yes, sir.

Q. On the ground that it might create a disturbance?

A. Yes, sir.

Q. And you stated that the reason for your conclusion was that protests had come into you?

A. Yes, sir.

Q. From various veteran and labor and War Mother and Gold Star Mother and other organizations?

A. Yes, sir.

Q. Now, there is an application here from Hudson County Committee for Labor Defense and Civil Rights dated May 5 asking for a permit for a meeting on May 7 at which Congressman Bernard and Congressman O'Connell will speak; I take it that was also denied?

A. Yes, sir, it was, for the same reason.

Q. Now, Commissioner, I want to come back and ask you again: You have approximately nine hundred men on the police force.

A. Around that.

Q. Approximately how many men do you think would be required to keep order in the event that Senator William E. Borah were granted permit to speak under the auspices of the debating society of Princeton College, could you do it with nine hundred men or two hundred or would you need more?

Mr. Hamill: I object. How could he possibly answer that question, how many men would be required to keep order in case a certain person wanted to speak? Now, wouldn't it depend on the situation?

The Court: It seems to me that it is at least one of the principal issues, isn't it?

MR. HAMILL: Whether it is or not, is there any police officer in the United States who can say how many policemen would be required to keep order in case Mr. A. Smith spoke under the auspices of Society B, wouldn't it depend upon the circumstances existing at the time?

MR. ERNST: Your Honor please, I will make my question specific.

MR. HAMILL: If it were in the middle of the night and no one were around he wouldn't need any.

THE COURT: It should be more specific, I think.

Q. I thought I had made it specific when I referred to the specific application.

MR. HAMILL: No.

Q. But now I want to ask you, assuming that the application of the debating society of the Princeton boys had been granted and William E. Borah were permitted to speak, you having turned down the application on the fear of disorder, how many police do you think would have been needed to keep order?

MR. HAMILL: I object. How does he know? That assumes that he would know the importance of the Princeton Society and who they were and in an intimate way.

THE COURT: As I understood it, his reason for denying this application was not on the ground of the society; your real reason was that you didn't know he was going to speak, is that it? I mean that letter.

THE WITNESS: I saw in the paper where he wasn't coming.

MR. HAMILL: He wouldn't know ff it were a Harvard society.

MR. ERNST: Your Honor please, we have the typewritten record of the official in charge of the administration of the ordinance showing that that application of the Princeton Debating Society was denied because there might be disorder.

THE COURT: I understand you don't stand on that.

MR. ERNST: He cannot stand on any other, your Honor.

MR. HAMILL: And your Honor please, he wants the Court to draw the conclusion that because it is a Princeton society and because it is a certain speaker there couldn't possibly be any disorder.

MR. ERNST: Oh, no.

MR. HAMILL: That is absurd.

MR. ERNST: Oh, no your Honor, that is not my intention.

THE COURT: He is taking a different position now, Mr. Hamill.

MR. ERNST: I will tell you my position, your Honor. It seems to me if the ordinance is constitutional it is the duty of a human being to determine in each and every instance of an application whether or not there will be a disturbance. Whether or not there will be a disturbance must depend on many factors. This witness has testified that there is in effect only one factor—I have had him three times in the record of last week and the factor is: will there be a disturbance gaged by the protests as he derives them from his common sense and the newspapers and resolutions? Now, let us assume that he got three protests against the Whig Society with Senator Borah speaking, obviously he wouldn't listen to three puny protestants, he would

send maybe one policeman out to handle the three men, and in each case, under his own theory, he must determine whether or not the protest is so big that he couldn't keep order. He is not denying the permit because there may be disorder, he is denying the permit because he is incapable of keeping order. That is his only theory.

MR. HAMILL: No, your Honor please.

MR. ERNST: I asked my question——

THE COURT: As I understood, Commissioner, I don't think your letter that you sent out in the case of this Princeton society was your real reason, was it?

THE WITNESS: My reason stated in my letter, your Honor——

THE COURT: Because you didn't really think there would be a riot if the Princeton boys came to town, did you?

THE WITNESS: Well, I have had other college boys cause plenty of disturbance, very much disturbance. I will stand on that letter that I sent to the president of that society.

MR. ERNST: Now——

THE WITNESS: And my reasons for it, if you want to know them——

Q. No, I don't want to know them. Your counsel can ask them.

Now, I want to ask you: You came to the conclusion there would be a disturbance?

A. Yes, sir.

Q. If Senator Borah spoke?

A. Not if Senator Borah spoke.

Q. Well, will you let me finish. If he spoke under the auspices of the debating society?

A. All right, go ahead.

Q. If you will not interrupt me you will understand me maybe.

A. I am trying to.

Q. I asked you just a simple question. You came to the conclusion there would be a disturbance if Senator Borah spoke under the auspices of that debating society, is that right?

A. It is not.

Q. You came to the conclusion that you had to deny the permit because there might be a disturbance?

A. That's it.

MR. HERSHENSTEIN: Just a minute. I think, your Honor please, what this witness might do is not evidential in this case without all the facts and circumstances being investigated.

MR. ERNST: I am not asking him "might," I am just asking him, did he deny the permit to Senator Borah to speak under the auspices of the Whig Society because he was afraid there would be such disorder that he couldn't cope with it?

MR. HERSHENSTEIN: He didn't say that; he said——

MR. ERNST: I didn't ask him what he said. If you will just save it for cross-examination or take an exception, just try a lawsuit.

MR. HERSHENSTEIN: We are trying a lawsuit.

MR. ERNST: Will you please make an objection and take an exception. You can ask all the questions you want, you can have him for a week.

MR. HERSHENSTEIN: I hope not.

Q. I asked you——

THE COURT: So do I.

MR. HAMILL: I hope you two gentlemen will settle the procedure between you.

MR. ERNST: I am asking a question; if you will stop interrupting with speeches and make formal objections as a court of law should require we will go places.

THE COURT: All right. Is there a question?

Q. The question is, did you not deny the right of Senator Borah to speak under the auspices of the Princeton Debating Society because you were afraid there would be disturbance?

MR. HERSHENSTEIN: There are two questions there.

MR. HAMILL: I object; it contains an assumption of fact which is not in the evidence. Now get that question: did you deny a permit for a meeting because Senator Borah was to speak?

MR. ERNST: I didn't say because.

MR. HAMILL: Under the auspices of the Princeton society; there is nothing in the evidence to show that Senator Borah was to speak. He told us that Borah withdrew, so therefore it contains an assumption of fact which is not in the case.

THE COURT: Mr. Hamill, I asked Mr. Casey if his real reason for refusing this permit was that he didn't think Senator Borah was going to speak. I thought he said that it was. Now he says that isn't so.

MR. ERNST: He says he stands on the record, he said it three or four times. May I frame the question again so that Mr. Hamill and nobody will misunderstand it?

Q. Did you make an investigation of the facts in regard to the application of the Princeton Whig Cliosophic Society

permit for to hold an outdoor meeting with Senator Borah as speaker, make an investigation?

A. I received the correspondence, yes.

Q. I didn't ask you that at all.

A. I didn't investigate it, no.

Q. You didn't? Now, may I refresh your recollection because you want to be right and I take it that you wrote in a letter that you had made an investigation. Let's get that clear?

A. Yes, that's what I say.

Q. Do you want to change your testimony now to indicate that you made an investigation?

A. Well, the investigation was what I saw in the papers, I think, if I remember correctly.

Q. All right. But you made an investigation?

A. I saw it in the papers.

Q. I didn't ask you what it was, we will find that out later. Now, then, you denied the permit of the Whig Society to have Senator Borah a speaker in Jersey City?

A. I did.

Q. You did; and you did it on the ground that the meeting, that such meeting of Borah's speaking under such auspices, would tend to create disturbance and disorderly assemblage, is that right?

A. Well——

Q. I show you a letter——

A. That is right.

Q. —to refresh your recollection?

A. That is right.

Q. It is right?

A. Just a minute. Let me explain it, please.

Q. Well, I will ask you the next question.

A. Well, now, just a minute. Let me explain it.

Q. I earlier asked you if you denied it on that ground and you said yes.

A. I think you are very technical about it. I am entitled to make an explanation.

Q. I am very technical.

A. No doubt about it.

Q. I am very technical with you, sir; very. Now, let's go further. You denied it on the ground that there might be a disturbance?

A. Yes, sir.

Q. Did you mean thereby that you did not have adequate police force to prevent disturbances at such meetings?

A. Disturbances are a funny thing to prejudge.

Q. I just asked that question. May I just interrupt——

A. Let me explain it, please?

Q. No, no.

A. I can explain it.

Q. You can't answer my question?

A. I have got to explain it.

Q. You can't answer my question?

A. I can't answer it without an explanation.

Q. All right.

A. The situation, the way it presents itself to a policeman.

Q. I am trying——

A. Just a minute.

MR. ERNST: No, if your Honor please.

THE WITNESS: I think, your Honor, I am entitled to explain it.

MR. HAMILL: I ask that the witness be permitted to complete his answer.

THE COURT: Go ahead.

A. Different positions that confront a chief of police, he has got to govern himself accordingly.

Q. All right.

A. Twenty-five men can handle a crowd maybe of ten thousand people; a thousand men can't control a mob of five thousand unruly people, of two thousand unruly people. And what is happening all over the country today proves that. You are well aware of that fact.

Q. No, I am not, sir.

A. Yes, you are; just the same as anybody else.

Q. Mr. Casey, do you know about all over the country instances, as a cop and police officer, you have been called that——

A. I said a police officer.

Q. (Continuing.)—of violence, in New York City, at Columbus Circle or Union Square?

A. Do I remember? Certainly.

Q. Yes, do you know of any? You referred to all over the country.

A. Yes.

Q. When?

A. I know there has been plenty of disturbances in New York City.

Q. I asked you if you knew of any instance of police meeting to protect a meeting at Union Square or Columbus Circle in New York City? Do you know of a single one?

A. Yes, there have been.

Q. What?

A. There have been. I cannot give you the date now.

Q. You are sure there have been?

A. Certainly.

Q. Yes?

A. I can prove it.

Q. All right. Now you said that under certain circumstances a few police could handle a crowd?

A. Yes.

Q. And under others it took a lot of police?

A. Certainly.

Q. That is right, I agree. Now when you denied the application of the Princeton Debating Society, do I understand that that meant that you thought it was one of those situations where it would take many police?

A. It certainly would. I don't know how a crowd feels. I can't judge a crowd no more than you can.

Q. That is right. And although you cannot judge a crowd, you judged sufficiently to deny the right of Senator

Borah under these auspices to speak, because there might be an unruly crowd?

A. That is it.

Q. You have the power to call on the governor of the state for additional force and power under certain circumstances, haven't you?

A. I have, but I don't believe in calling him without my knowing that beforehand, and I get positive proof. It is up to me as head of the police department to protect the lives and property. The only time I would call for it would be for an unruly crowd when it got out of our hands, that we couldn't cope with it.

Q. So that in effect, whenever the mob, using the word that you used in evidence the other day, becomes so threatening in respect to a particular proposed meeting, you feel it is your duty for the good of the city to deny the permit?

A. Yes, sir, to protect life and property.

Q. That is right. Now, let's just get back here. Mr. Casey, the other day when you were on the witness stand, in answer to a question as to particular speeches, you said in part, page 566, "It wasn't what they would preach, but how the mob that went there would take it."

A. Yes, sir.

Q. Do you stand by that position?

A. I certainly do.

Q. Now, let me ask you, if you see a mob in formation, do you ever warn the mob to behave itself? Have you ever done that?

A. Not as the chief—I am not the chief of police; that is the duty of the chief of police, to do that. I am the Director of Public Safety. I have got both the police and fire department under my jurisdiction.

Q. Now, the chief of police is under your jurisdiction?

A. He is.

Q. And you just testified that it is his duty?

A. It is his duty.

Q. To warn people who threaten——

A. It is his duty to——

Q. To do what?

A. It is his duty to protect life and property. (Laughter at counsel table.).

A. (Continuing.) What's funny about that? Anything?

Q. Let's get down from the skies——

A. I am right down.

Q. —and get down to what I asked you. Is it his duty to try to forestall and prevent a mob developing in Jersey City?

A. Certainly it is his duty.

Q. Isn't it his duty to warn a mob that they should behave themselves?

A. It is his duty, yes.

Q. All right. And you would say that if he aided and abetted and fomented the mob, he would be derelict in his duty?

A. Oh, that is ridiculous.

MR. HERSHENSTEIN: I object to that. Wait a minute. That is an expression that is not relevant or material.

MR. ERNST: Oh,——

THE COURT: Commissioner Casey would undoubtedly say yes, of course if he fomented a mob, he would be derelict in his duty.

Q. Wouldn't he be derelict in his duty if he fomented a mob and aided them?

A. Aided them; certainly he would.

Q. Sure.

A. There is no doubt about it. There is no police officer aiding mobs.

Q. Now in order to put down a mob, the authorities in Jersey City, and you in particular, have a legal power to call on the armed forces of the state, is that right, you have the power to do it?

A. That is right.

Q. And you also—the state, as you know, also has the power to call on the armed forces of the United States?

A. That is right.

Q. Is that right? Have you ever called on the state or the national power to aid you?

A. I have not.

Q. Just a minute, let me finish. Have you ever called on the state or national powers to aid you when you were of the opinion that a mob might interfere with the public peace?

A. I have not. We have always been able to cope with the situation as it presented itself.

Q. Just one question I want to ask you that I overlooked: Did you in connection with the Catholic Worker application come to the conclusion from the investigation as far as you carried it, that the subject matter of the speeches that were wanted to be made by the Catholic Worker might create disorder? You will recall the speech, the subject of the speech; the discussion of Papal Encyclical. You didn't come to the conclusion that that would create disturbance?

A. No.

Q. Did you come to the conclusion that the speakers themselves would create disturbance?

A. What they might say would cause disturbance.

Q. That is right. And so in advance of what they or other speakers might say you have to come to the conclusion as to whether their words might create what you call mob disorder?

A. Yes.

Q. Is that right?

THE COURT: Mr. Ernst, the stenographers have asked us to take a ten-minute recess at twelve o'clock and at three o'clock. So we will take a ten-minute recess at this time.

(At this point a short recess was taken.)

Q. If you believe that disorder will happen through mob, at one of these outdoor meetings, do I understand you

to indicate that you are unable to tell in advance whether the disturbance will be very big or mild?

A. You have to wait until the occasion presents itself.

Q. On the occasions of the denials of permits which have already been referred to this morning——

A. Yes, sir.

Q. —do I understand that in each one of those cases you thought there would be disturbance?

A. I did.

Q. And in each one of those cases you did not know whether the disturbance would be very large or very little, but in any event you thought it was so large that you couldn't control it?

A. No, I didn't, either.

Q. What did you think in respect to it?

A. I wanted to prevent it before it started.

Q. And so, Mr. Casey, you thought that there would be some disturbance that you wanted to prevent?

A. I did, if I refused it, yes.

Q. Yes, I am only talking about the refusals.

A. Yes, sir.

Q. And so wherever you refused it you had in mind that there would be some disturbance, is that right?

A. Well, there was liable to be.

Q. Liable?

A. Liable to be.

Q. And whether the disturbance would be of a vast nature or of a minor nature, you couldn't guess accurately, could you?

A. I couldn't, and nobody else could.

Q. Nobody else could. And so if you came to the conclusion that there would be disturbance you would deny the permit for the safety of the community?

A. For the safety, that is right, I would refuse a permit where in my judgment I thought that disturbances, riots, violence, bloodshed and murder might happen.

Q. Irrespective of whether you thought that your police could control the mob or not?

A. I think I explained to you about mobs or crowds. It is hard to tell how they are going to act. I have acted to the best of my judgment.

Q. That is right. And you cannot in advance of such a meeting know whether the mob will be controllable or not?

A. No one could, no.

MR. HAMILL: I object.

THE COURT: He has already answered that he couldn't.

MR. HAMILL: For this reason——

THE COURT: He said no one could, Mr. Hamill. He has already answered it.

MR. ERNST: I am just trying to get his answer——

MR. HAMILL: Well I object to any further questions as to whether or not the mob could be controlled. The ordinance distinctly says for the purpose of preventing riots, disturbances or disorderly assemblage. There seems to be a great misconception in the mind of examining counsel. He seems to think that if the riot, disturbance or disorderly assemblage is such as the police can put down, that then the director must not refuse the permit. Indeed he went so far as to say "couldn't you call on the Governor?" The statute imposes on the public officer, the director, the duty of putting down the riot, of putting it down if he believes a riot, disturbance, or disorderly assemblage will arise, whether he can put it down or not.

MR. ERNST: If your Honor please——

MR. HAMILL: It is for the purpose of preventing a thing rising, not something that he could control, but whether he could control it or not it is for the purpose; and then this statement, "Couldn't you call on the Governor"? If the Governor sent the militia to help him, would here be any use of them holding a meeting?

Would the situation be such a situation where anyone could speak?

MR. ERNST: If your Honor please, I am perfectly willing and content to take Mr Hamill's statement, if Mr. Casey will make it his. Mr. Casey is on the stand.

Q. Have you heard Mr. Hamill's statement about your duties under that statute and do you agree with it? Do you want it read?

A. I always agree with my counsel.

Q. Always do. And you make that then your position in the matter?

A. Certainly.

THE COURT: Lot's of people don't.

THE WITNESS: Well, I agree with him.

Q. All right.

A. I am in the hands of my counsel, I think.

MR. HAMILL: For the purpose of preventing it.

Q. Now, Commissioner, I ask that if the purpose is to prevent disturbance, do you not have to deny every permit where you get numbers of complaints and protests, irrespective of whether you think the mob will be substantial or not, on Mr. Hamill's statement?

MR. HAMILL: I didn't say whether the mob would be substantial; irrespective of whether you prevent—if no riot, disturbance, or disorderly assemblage is going to arise, of course he cannot deny the permit. The ordinance does not give him the right capriciously or arbitrarily to deny permits. That is admitted. He can only —"provided that said permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage." There isn't any doubt of that.

Q. Will you answer my question, Mr. Casey?

A. What is that.

Q. Do you want the stenographer to read it?

A. Yes, please, if you don't mind.

(Pending question read by the reporter.)

A. When the occasion presents itself, then I handle it to the best of my judgment.

Q. Now that means that if you read the protests that come in for a particular meeting, you then make up your mind on reading the protests whether or not there will be a disturbance?

A. Well, it is according to who makes the application and whether to my best judgment I think we are liable to have violence and I deny the permit.

Q. Now one of the bases for your conclusion in your mind as to disturbance is the protests you may receive, isn't it?

A. Yes.

Q. That is one of the bases. Now I ask you if you receive for any meeting a substantial number of protests, do you not then deny the permit on the ground that if a substantial number of people protest there may be a disturbance?

A. I use my own sound judgment on it when the case presents itself.

Q. Now, your judgment as to what, Commissioner? There are two things——

A. As to what the complaints are, what the meeting is and what is liable to develop out of it.

Q. That's right. Now, you are not concerned with whether or not the disturbance will be controllable or not, that doesn't bother you?

A. Why, certainly it does, by all means; why not?

Mr. Ernst: If your Honor please, I will have to have Mr. Hamill's statement read to the witness. Will you read back Mr. Hamill's statement? As I recall it, he said the statute had no relation to whether or not the disturbance could be controlled or not. Now, let

us read the statement without more speeches. I ask that the statement be read.

MR. HAMILL: Oh, I hope you will take that admonition to yourself.

THE COURT: Mr. Heironimus, the other reporter, has gone out.

MR. HAMILL: Do you want me to make it again, if it will help you?

MR. ERNST: Oh, yes, I am willing. Go ahead.

MR. HAMILL: Thanks for your graciousness, as the eagle said when they handed him a grasshopper.

The ordinance distinctly says first of all that the application shall be made at least three days before the meeting; that then he is to conduct an investigation. The protests are part of the investigation. He may get telephone calls, he may get oral information. He is to examine all the circumstances and then he is under a duty to refuse it if he belives it to be proper to refuse the issuance provided that the permit shall only be refused for the purpose of preventing riots, disturbances or disorderly assemblage. That is the wording of the ordinance.

MR. ERNST: Mr. Hamill now has merely read the ordinance.

MR. HAMILL: All right, I shall go further.

MR. ERNST: I would like to say—now, here is the stenographer, let's get it.

MR. HAMILL: Do you want me to add that further statement?

MR. ERNST: No, we will take it from the stenographer.

MR. HAMILL: I can give it later.

MR. ERNST: You can give it later when you take the stand. Let's have Mr. Hamill's statement.

(The reporter read as follows):

"MR. ERNST: I am just trying to get his answer.

"MR. HAMILL: Well, I object to any further questions as to whether or not the mob could be controlled. The ordinance——"

MR. ERNST: Wait a moment, let me interrupt a moment.

Q. Mr. Casey, do you recall that sentence?
A. What's that?

MR. ERNST: Let's read it again. I want you to peg this in your mind, this sentence of Mr. Hamill's, and I asked if you agreed with it.

(The reporter read as follows):

"I object to any further questions as to whether the mob can be controlled. The ordinance distinctly says for the purpose of preventing riots, disturbances or disorderly assemblage. There seems to be a great misconception in the mind of examining counsel. He seems to thing that if the riot, disturbance or disorderly assemblage is such as the police can put down, that then the Director must not refuse the permit. Indeed, he went so far as to say 'couldn't you call on the Governor?' The statute imposes on the public officer, the Director, the duty of putting down the riot, of putting it down if he believes a riot, disturbance or disorderly assemblage will arise, whether he can put it down or not; it is for the purpose of preventing a thing rising, not something that he could control but whether he could control it or not it is for the purpose."

And then this statement.

MR. ERNST: All right, that's all. Just stay here one moment, Mr. Stenographer.

Q. Do you accept as your statement the following, which is a paraphrase of Mr. Hamill's thought, whether or not a particular meeting can be controlled is not the test because you deny, in order to prevent a situation arising where you have to try to control the mob; do you agree to that?

A. Now, some of it I don't agree with.

Q. Well, then, will you explain your position and forget Mr. Hamill; explain your position on whether or not—let me give you what I really want, Mr. Casey. I want to know whether in determining to grant a permit or not you concern yourself with whether there will be a disturbance or whether there will be such a disturbance that you wouldn't be able to control it.

A. Where there is a disturbance, that I am not able to control it and I take precaution before it happens, under the same answers that I gave on unruly crowds.

Q. Doesn't it mean, Mr. Casey, that whenever there is an application for a permit to you, if a substantial number of people protest and indicate that there might be disturbance, you would of necessity come to the conclusion that the safe thing to do for Jersey City is to deny the permit?

A. I use good judgment on it. I cannot give you an answer what I would do with every permit that comes in.

Q. Well, now, let's take the——

A. There might be people that would protest but under the circumstances, after I looking that over, it is up to me to use my sound judgment on it.

Q. That is what the whole case is about, whether you did use good judgment.

A. And I think I did, you think I didn't.

Q. Now, let's go further. Did you have any protests at all in respect to the application of the Princeton debating society? Do you want to look through the papers?

A. No, I don't think I did.

Mr. Ernst: Are the protest papers here, the balance of the papers?

MR. HAMILL: I do not know. If you are addressing that inquiry to me, my answer is I don't know.

THE COURT: Isn't the gentleman who went to get them, isn't he still here?

A VOICE: I was called back.

THE COURT: So they aren't here. The answer is no.

MR. HAMILL: No, they were called back, and he never received any new instructions. You wanted him called back. Now here he is sitting waiting patiently for new instructions from you.

THE COURT: I think the instructions were that he was to get all. What became of that little message you gave him?

MR. ERNST: I dictated into the record—will you kindly go now and get all the remaining papers called for in the subpoena, including particularly the protests and all other papers in regard to applications for permits granted, pending, denied during the last three years.

THE VOICE: That's the same as I was given before.

THE COURT: No, that's a little different because I think the reason you were called back was there was some suggestion there were protests in other places than the Commissioner's office.

MR. ERNST: I said I wanted them all.

MR. HAMILL: Might it not be well if counsel would write down what he wants?

MR. ERNST: I don't intend to write it down; this is no kindergarten. You know what I want. Read the subpoena. It is typed there.

THE COURT: Get all the protests, whatever there are.

MR. ERNST: From the Mayor's office and everywhere. I don't want you to come back and say there are some others you haven't brought because we want to see the complete record. Will you kindly go right away.

MR HAMILL: Oh, now, we will object to that. You didn't take in the dog license bureau. Would you want those too? Now, here, I want to put an objection on this record. Counsel has no right to call for all the records of a certain public office. I argued that the other day. He must specify with some particularity, with reasonable particularity, what it is he wants; he cannot say "Go back and get me all the records in the Mayor's office and all the records in the Police Department and all the records in some other department."

THE COURT: All we want are the protests; Commissioner Casey said that he thought there were some protests in the Mayor's office as well as his own, didn't you, Commissioner?

THE WITNESS: Protests, yes.

THE COURT: And that's all we want.

MR. HAMILL: How does your Honor rule?

THE COURT: I want the protests in all the offices. I think there are only two that are involved.

MR. ERNST: Your Honor please, I didn't know that there were protests in the Mayor's office.

THE COURT: No, the Commissioner volunteered.

MR. ERNST: Now, if there are protests elsewhere let's have them all. What's the kidding about it?

MR. HAMILL: No, we are trying to save time, to try a case, and while we are indulgent to your ramblings there is a limit to our indulgence.

THE COURT: I am afraid I am the one that indulges everybody's ramblings.

MR. HAMILL: Well, we appreciate that, your Honor.

THE COURT: But now we know what we want I think you can get them by two o'clock.

MR. ERNST: Is somebody going to get them, I wonder?

THE COURT: Yes, there he is.

MR. ERNST: No, but is he going?

THE COURT: He is going out.

MR. HAMILL: Whom would you like to pick? You can pick anybody you want.

MR. ERNST: No, anybody, I didn't know the man: I just want to make sure there is no more runaround.

Q. Commissioner, you also have some powers over the meetings held in halls, haven't you?

A. No powers at all.

THE COURT: Is that quite so, Commissioner? You can forbid a meeting, can't you?

THE WITNESS: Where?

THE COURT: In a private hall.

THE WITNESS: I think there was an injunction issued against——

THE COURT: No, I mean you can forbid a meeting. I am not sure. The only reason is I have a case here where the police in another city did forbid a meeting.

THE WITNESS: It is according to what kind of a meeting it is.

MR. ERNST: May I refer the chief enforcement officer of the community on this subject——

THE WITNESS: I am not the chief.

MR. ERNST: —so as to modify his testimony. I ask you if you are familiar with an ordinance of Jersey City dated January 21, 1920, with respect to the use of halls.

THE COURT: Is that in the bill of complaint?

A. I am.

MR. ERNST: It is, Schedule A, your Honor please.

Q. You are?

A. I know about it, yes.

Q. And in that ordinance the Chief of Police has certain powers in respect to the use of halls, hasn't he?

A. I think that that ordinance, there was an injunction issued by Vice-Chancellor Fielder; if I am not right, I guess one of the law department might be able to explain it to you.

Q. I asked a very simple question.

A. I know it, I am trying to explain it.

Q. I asked under an ordinance—and if you will kindly read it you will see it on its face—hasn't the Police Department got some powers under the ordinance? Just read the few words——

THE COURT: This is Vice-Chancellor Fielder's case, Mr. Casey.

THE WITNESS: Well, I thought that's what he was referring to, your Honor.

Q. No, I am starting with the ordinance and just asking whether the Police Department has any power.

A. Yes, sir, under this ordinance they have.

Q. Do you know if the Police Department has ever exercised that power?

MR. HERSHENSTEIN: Which power, if your Honor please?

A. No, it was set forth in the ordinance that the Police Department——

MR. HERSHENSTEIN: Power for violating the ordinance?

A. No power vested in their hands under the ordinance.

MR. HERSHENSTEIN: I think, your Honor please, that question is too vague for this witness to answer "exercise any power under the ordinance." Now, I don't understand that.

Q. All right, we will take it simply. Commissioner, under this ordinance, under certain circumstanecs, a permit for a speech in a hall has to be first obtained from the Chief of Police, is that right?

A. Not under that ordinance. I guess it plainly states in that ordinance——

Q. If you will listen to my question, I said under certain circumstances.

A. Under certain circumstances.

THE COURT: That ordinance is practically in the same words as the Anti-Anarchy Statute of New Jersey, that is correct, isn't it?

MR. ERNST: I didn't ask the Commissioner——

A. Yes, there is.

Q. Under certain circumstances?

A. Under certain circumstances.

Q. He has to get a permit. Do you know whether the police have ever granted or refused a permit under that ordinance?

A. I couldn't tell you.

Q. Who would know?

A. That is hard to say. I don't think anybody ever applied to me.

THE COURT: Doesn't that case show there was somebody?

THE WITNESS: I guess there was somebody.

Q. I didn't ask whether people applied, I said who under you, in the Police Department, would have the information as to whether or not permits had been granted or refused, the Chief of Police?

A. Well, I don't think he would know either.

Q. You don't think he would know?

A. No.

Q. Now, who under the Chief of Police do you think would have the information?

A. I don't know of any case where we did refuse a permit.

THE COURT: Let me see if that case is the one; I didn't finish reading it.

THE WITNESS: I guess it is; there is something there.

THE COURT: I can tell in a second.

Q. Now, Commissioner, if there is a proposed meeting in a hall there might also be a public disturbance, is that right?

A. That's right.

Q. And the disturbance in the hall should also be prevented in your opinion if possible, is that right?

A. We don't want any disturbances anywhere.

Q. That's right. And the Police Department or your office takes the position that as to meetings on streets and in halls it is your duty to prevent possible disturbances by a mob?

A. At all times.

Q. At all times. And you have made that position known to the people of Jersey City?

A. They have known it for years.

Q. They have known it for years. And you yourself have so stated at times?

A. Certainly.

Q. And that applies to disturbances whether on street corners or halls, you just don't want disturbances in Jersey City?

A. We don't want them. No.

Q. And you prevent meetings where you are of the opinion that there will be a disturbance?

A. Never to my knowledge have I prevented a meeting in a hall.

Q. I didn't ask you that. You prevent meetings where you believe there will be disturbance?

A. I don't prevent them in a hall.

MR. HAMILL: He has answered it, never did he prevent a meeting.

A. (Continuing.) A hall is a private place. A man has a right to let his hall to anybody he sees fit. I have got no jurisdiction over private property or public halls.

Q. I didn't ask you whether you had, I asked you whether you, if you knew there would be a mob disturbance in a hall, whether you would do something about it.

A. Yes.

Q. What would you do?

A. I would send a plainclothesmen there to find out what's what.

Q. And if you thought that there would be a substantial mob at a hall for a meeting to be announced say tonight you would try to prevent the mob violence at that hall, wouldn't you?

A. By all means I would prevent it.

Q. And how would you go about preventing it?

A. If I thought——

Q. Let me ask you: You would warn the speaker at the hall to be careful, wouldn't you, you might start that way?

A. I would not.

Q. You would not. What would you do?

A. If I thought there was going to be a disturbance there with that party that was going to come there and

trouble was brewing, it is my duty to protect the speaker and stop violence and bloodshed.

Q. Now, that is your duty. And how would you go about it?

A. No matter where it is.

Q. What?

A. No matter where it is it is the duty of a policeman.

Q. To do what?

A. To suppress crime.

Q. No, but to protect the speaker, you said, didn't you?

A. And to protect the speaker, if I think that that man is liable to be beat up and injured and a riot will develop from it, it is my duty to prevent that.

Q. To prevent the meeting?

A. To the best knowledge that I have.

Q. Prevent the meeting. Now, doesn't that mean, Commissioner, that if there are just three or four hoodlums and trouble-makers you wouldn't call off the street meeting, for example, because you could protect the speaker from the violence if there were two or three hoodlums?

A. You have to, Counselor, as I told you before, two or three or five or six, a couple of hoodlums is liable to start a riot that will wind up with murder, you know that.

Q. That's right. And so if there are even two or three or five or six hoodlums it will go to such an extent and no one can tell in advance how far it will go, so that as I understand it, the wise thing for Jersey City is to not let any hoodlums and not allow any meeting if there are going to be some hoodlums?

A. Oh, no, not some hoodlums.

Q. What is your position? Let's get it.

A. Just a moment. Your questions are very, very catchy, Counselor. Why don't you be fair about it?

Q. You go ahead and tell me. What do you do when you think there are going to be six hoodlums?

A. Six hoodlums? I cannot tell what I would do until the occasion presents itself.

Q. Let's take any occasion in your whole history where you thought there might be a small number of hoodlums. You mentioned six.

A. I didn't mention six, you mentioned six.

Q. You mentioned if there were two or three hoodlums.

A. I might have, yes.

Q. Let's not quibble who mentioned them.

A. We won't, no.

Q. There is a situation where there are two or three hoodlums and you, as enforcement agent in the community, are worried that because, as I understand it, those two or three will be there, it might spread. Now I ask you under what circumstances do you think it is necessary to prevent the meeting altogether and under what circumstances do you say, "Well, I am going to send enough troops out, I think I can cope with the two or three hoodlums?"

A. The two or three hoodlums would be removed if they are starting a disturbance.

Q. And so if there are only two or three hoodlums would you allow the meeting to go on and just remove the hoodlums?

A. That's right, it is according to—just a minute now, Counselor. It is according to how big the meeting is and what I judge would happen from a disturbance when the occasion presents itself.

Q. Now, if the threat of the mob is too big for you to cope with then you deny the permit in order to have peace in the community?

A. I deny the permit if I think that I am going to have violence and bloodshed and riots.

Q. You mean you never deny it if you just think there is going to be a disturbance?

A. Riot or bloodshed.

Q. You weren't making a distinction between riot, bloodshed and disturbance, were you?

A. Well it practically leads to the same.

Q. That's right. And so if you ever think there is going to be a disturbance or any violence you deny the permit?

A. Yes, sir.

Q. Now, Commissioner, if two or three thousand workers in the community resent a speaker for a particular political party, let us say, the Socialist Party, you then denied the permit, didn't you, because you thought there might be a disturbance?

A. Yes, I did.

Q. Now let's assume that two or three thousand people sent in protests and said there would be a disturbance if the Republican Party had a meeting, would you treat the two situations the same or would you discriminate?

A. Now, that is a different question entirely.

Q. Just answer, would you treat them the same?

A. I would not.

Q. You wouldn't. All right. Now, why wouldn't you treat those two situations the same?

A. We have never had any trouble at Republican or Democratic meetings, they are allowed, never stopped, never investigations made of them.

Q. Now, have you got——

A. It is not the party, it is the man, the individual, Counselor, that is going there to talk that is going to cause the trouble.

Q. That is the real pivot?

A. That is the real issue, and I guess you are aware of it.

Q. That is the crux of the situation?

A. I figure that's what it is.

Q. And now I ask you to refresh your memory as to what you testified to this morning in regard to William E. Borah. Didn't you say just the opposite?

A. Oh, well——

Q. Didn't you say just the opposite?

A. No, I didn't either, not to my way of recollecting.

Q. Answer my question. Didn't you say that is wasn't a matter of Borah at all, it was the auspices?

A. Of the people that invited him there, yes, I did say that, but I am telling you about Democrats and Republicans, that is what you just spoke of.

Q. Let me get this clear as to Democrats and Republicans. You now say it depends on the people who are going to speak?

A. No, no, I never even bother with political meetings.

Q. You allow any of them?

A. Never had any bother at them, never any protests.

Q. Of political meetings?

A. Political meetings; then you mentioned, you specified Republicans.

Q. All right. Now, wait. How about other political parties, do you grant permits to any political parties than Democrats and Republicans?

A. Do I?

Q. Do you?

A. Certainly, they have got a perfect right to talk.

Q. Now, the Socialist Party, the evidence showed was denied a permit.

A. Yes.

Q. Now, you therefore did deny a permit for another political party, didn't you?

A. Well there were reasons for it.

Q. What was your reason?

A. Because of the protests over the person that was going to talk.

Q. Who was going to talk?

A. I think it was Mr. Thomas.

Q. How many protests do you think you got against Norman Thomas speaking at that meeting?

A. I couldn't tell you.

Q. What?

A. I couldn't tell you, Counselor. I just read them and lay them aside and forget about it.

Q. What?

A. I just read them and lay them aside and forget about it.

Q. Do you check up to find out whether the person who signed the protest is a live, real person, or whether it is just a phony piece of paper with a phony name on it? Do you ever check that up?

A. Well, you have got to take that under consideration. I get many a crank letter too, the same as anybody else.

Q. Oh, no, I am just asking you, do you check up ever the authenticity of the document?

A. At times, yes; find out if it is a legitimate letter.

Q. All right.

A. I don't go through all of them because——

Q. All right, name me one circumstance where you ever checked up the authenticity of the document; one out of all these thousands of protests which you say you received.

A. Why,——

Q. Name me one that you checked up personally, in the course of your duty to investigate. Name me one protest that you ever checked up to find out if it was a bona fide signature, and a bona fide organization or bona fide human being. Name me one.

A. Well, off hand I couldn't.

Q. You couldn't, all right.

A. Because I don't go into it that deep. I find out is there a man, see; does John Jones live at this address? Yes. That's fine.

Q. Now you do check up whether the man lives at the address?

A. Certainly, at times; not all of them.

Q. At times. Name me one time in your entire history where you have ever done it.

A. I can't remember it.

Q. You can't. If you can't remember, is there somebody else in your office that might remember?

A. Well, I have got other duties to consider besides checking up on every letter that I get.

Q. That's right. That's why——

A. If I had done that——

Q. That's right.

A. It would take up practically all my time.

Q. And that might have been a blessing.

A. What's that?

Q. That might have been a blessing.

A. Certainly; it would be fine.

Q. Now let me just ask you, as I was going to ask you, is there anybody in your office who did check up any of the addresses?

A. I couldn't tell you.

Q. You couldn't tell me. Did you ever instruct anybody to do it?

A. Off hand, I couldn't say.

Q. All right. Now do you know whether or not a lot of the protests are on form letters written in the same words by different people? Did you ever know that?

(No answer.)

Q. Yes or no. Did you know it?

A. I never went that far into it.

Q. You didn't go that far?

THE COURT: He has never been in Congress.

MR. ERNST: That's right.

A. No, I am not a lawyer.

Q. No, no; but you do know something about propaganda machinery, don't you?

A. Yes.

Q. You are not naive about the fact that people get other people to send telegrams in the same wording; you have heard of that?

A. There is no doubt about that.

Q. You have heard of that. But you did not check up in your situation whether you were getting letters and telegrams sent in en bloc, is that right?

A. Well, they come in, yes; I admit that.

Q. And the same wording didn't interest you? You didn't look——

A. Not in the least. I didn't go that far into it.

Q. That is right. Don't be irritated. I just want to prove——

A. I am not irritated in the least.

Q. I just want to prove that you didn't go into it at all, hardly, so don't worry.

A. It is just the routine.

Q. Now, I want the Civil Liberties outfit.

On December 17, 1937, an application was filed, it is Exhibit P-12, in behalf of the American Civil Liberties Union. Is that right?

A. Yes.

Q. Will you look through that file and let me know if that application was ever granted or denied?

A. It was denied.

Q. Under what date was it denied?

A. December 20th.

Q. Is the denial contained in a letter dated December 20th? Will you kindly read it again (handing to the witness)?

A. It is made——

Q. What?

A. It is made for four different dates, if I remember—if I read it correctly.

Q. Mr. Casey, I asked you when it was denied, not when it was made. Did you ever deny that application or grant it?

(No answer.)

Q. Take all the time you want to read the letters.

A. No, I asked for the purpose of the meeting.

Q. I ask you the question again, did you ever deny or grant the permit?

A. I have not; I did not.

Q. Neither one?

A. Neither one; by that letter of mine.

Q. Under the statute there is a provision relating to three days' notice to be given to you for an application for a permit.

THE COURT: Under the ordinance you mean?

MR. ERNST: Under the ordinance, sir. Thank you.

Q. Is that right?

A. Right.

Q. Now will you tell the Court why you neither granted nor denied the application of the American Civil Liberties Union, although there was, as has already been offered in evidence, a sheaf of correspondence back and forth?

A. No, I can't tell you why. I don't remember the incident.

Q. Will you refresh your recollection from the correspondence?

A. I asked for the purpose of the meeting and who the people are who are going to address it.

Q. And you got that information, didn't you? Let's get the record clear. That's not my question to you, but you got everything you asked for in the way of information, didn't you?

MR. HERSHENSTEIN: If your Honor please, may I call your Honor's attention and counsel's attention to the fact——

MR. ERNST: I would just like to get the answer to my question.

MR. HERSHENSTEIN: I know, but there is a delay in answering and I think the Court should know the facts. Exhibit P-12, the application now referred to by counsel, is an application for meetings to be held either on December 20th, December 21st, December 22nd, or December 23rd. The letter is dated December 17th. The witness has stated on December the 20th he replied.

asking for further information. Counsel then produces a letter of December 28th in reply to that letter, and December 28th is six days subsequent to the last date on which a permit has been asked for. Manifestly, if your Honor please, the dates having gone by, no action was taken on that permit.

MR. ERNST: If your Honor please——

MR. HERSHENSTEIN: And that is the obvious answer.

MR. ERNST: If your Honor please, Mr. Hershenstein has just skipped some intervening letters. That's all there is to it. I don't want to bore the Court on the thing. If you will see the stream of correspondence, you will see it starts on the 17th; you will find that the American Civil Liberties Union answered every letter immediately. They came over to see Mr. Casey. One of the points I hope to bring out was the point Mr. Hershenstein helped me over with—this constant delay that got the application past the date.

Q. But let me ask you to read and merely answer my question, the reason you can give me later; did you ever grant or deny the application? Yes or no.

MR. HERSHENSTEIN: The witness said it was so long ago he doesn't remember.

MR. ERNST: He should look at his files, which are all that is in the files. They are not our files; they are produced reluctantly under a subpœna.

Q. Did you ever grant the application or deny it?

(No answer.)

Q. Let me help you refresh your recollection, Mr. Casey. If you will look at the letter of December 28th, which Mr. Hershenstein did not read fully, otherwise he would not have made the statement he made, in that letter the attorney for the Civil Liberties Union suggests any date commencing

the week of January 3rd, in order to overcome the delay caused in Mr. Casey's office.

MR. HERSHENSTEIN: You are referring to your application of the 17th, Mr. Ernst, that the application was denied?

A. What date was that you were talking about?

Q. Did you either reject or grant the application of the American Civil Liberties Union referred to in that correspondence?

MR. ERNST: May I ask that the witness examine the instruments? I don't believe Mr. Hershenstein is guiding the witness, but many friends of mine in the court room have so indicated.

MR. HAMILL: Well,——

MR. ERNST: You can cross-examine him later.

MR. HAMILL: That is a suspicion that certain people some distance from the witness may be having. It is a case where I am afraid the wish is father to the thought, to the charge.

MR. ERNST: Peop'e have come up to me in the court room. I just asked the witness——

Q. Did you ever grant the application or refuse it? I would like to get an answer before we adjourn.

A. I will give you an answer.

MR. ERNST: I think it is quite important.

A. I didn't affirmatively deny it, and I just——

Q. You what? I didn't hear you.

A. I didn't grant it or I didn't deny it. I guess the last paragraph on this letter of mine to Mr. Rothbard states that.

Q. And may I see the letter to which you refer?

(The witness indicated.)

Q. It states w at? That you didn't deny or grant?

A. I think that is the way I read it. I might be wrong.

Q. Will you read that aloud into the record, and see what relation it has to denial or granting?

A. "I acknowledge receipt by registered mail this morning of your undated letter referring to your application for the permit above mentioned. I note your statement which reads: 'Of course you realize that I intended to say in each instance 1937 instead of 1938.' I commend you for your accuracy and regret that the delay in this matter has been due to your evident evasiveness and unwillingness to answer the inquiries I submitted to you."

Q. Now, Commissioner, that means that the errors as to dates were yours and not Mr. Rothbard's?

A. No, it doesn't, either. I said his.

Q. Now what is the evasiveness in the correspondence that you refer to?

A. (No answer.)

Q. Name me one item that is evasive.

MR. HERSHENSTEIN: Of course, you know your letters were about five pages long, Mr. Ernst.

MR. ERNST: This is one of the important issues in the trial and it seems to me we might be informed on the matter.

MR. ERNST: May I suggest, your Honor, that the Commissioner might care to take the papers with him at lunch hour and save time.

THE COURT: Yes, all right.

BY MR. ERNST:

Q. I would just like to ask him one question now. On December 17th at the time you received the application from the American Civil Liberties Union for that permit, did you have any protests in your possession on that day?

A. Offhand I couldn't tell you.

Q. If you had any they would be found in the files?

A. Most likely.

Q. Where else might they be if not in the files?

A. They are in my files; nobody else has access to my files.

Q. So "most likely" you don't mean that, you mean they are there or not there.

A. They are there, yes.

Q. If there were any?

A. Yes.

Q. On December 17th when you received the application did you have any reason to believe that there might be an unruly mob in case such a permit was granted at the time of the receipt?

A. I will have to look this application over and study my answers and know what my reason for it was.

Q. I didn't ask that, I just asked——

A. I cannot tell you; that is quite a while ago. As I said before, I don't want to give you a wrong answer.

Q. Of course not.

A. I want to give you a true answer.

Q. Of course, I know that. Now, as a matter of fact, if you had known on December 17th or believed that there might be an unruly mob coming out to that Civil Liberties Union meeting requested, would you have gone to the trouble to ask for additional information as to speakers, the subject matter and purpose?

A. That is why I done it.

Q. You done what?

A. Why I asked. If I asked for who the speakers were I had a reason for it.

Q. Yes, and so that means that on the application itself you weren't sure that there would be an uncontrollable mob?

A. That's it.

Q. And so you wanted to find out the speakers?

A. Just what it was and who it consisted of, who the speakers were going to be.

Q. So that means that if the proper speakers had come along, ones satisfactory to you——

A. Now, just a minute, not satisfactory to me.

Q. Satisfactory to you, if you will let me finish—satisfactory to you as not being such as would invite a mob you might have allowed the permit?

A. I would have allowed the permit if I thought that I wasn't going to have riots and bloodshed.

Q. Now, the mere fact that it was the American Civil Liberties application didn't in itself mean that there would be a disturbance, did it?

A. It did not.

Q. In other words, there is no objection in itself and only on that score to the American Civil Liberties Union?

A. I told you that no matter who makes the application, when that application is made to me I study it and I find out whether it is going to cause trouble or not.

Q. You have told me that often, but that is not my question. My question is, it is very simple, Commissioner,—it is the last question before recess, when you received the application of the American Civil Liberties Union on December 17th, if you had merely, because it was the American Civil Liberties Union, thought there would be a disturbance you would have denied the permit then and there?

A. I would not. I take time to investigate it. That is why I denied it if I did deny it.

Q. In other words, the American Civil Liberties Union on its face as an organization was not banned from meetings?

A. They are not banned, no. I didn't ban them from meetings.

Q. No. It depends on who the speakers are?

A. And the trouble that will be caused by their talking.

Q. But it does mean that the Civil Liberties Union as such is not banned?

A. I don't ban anybody.

Q. Denied the permit?

A. I denied it for what I considered just cause.

Q. But on December 17th without having any protests——

A. I don't know whether I had or not.

Q. If there are none in the files.

A. I don't remember what led up to it or why I did deny the permit if I denied it.

Q. If you denied it. So at the moment you don't know why you denied it, if you denied it?

A. I don't remember.

Q. And even by looking over the correspondence you cannot recall?

A. No, I have had other work to attend to without paying strict attention——

Q. We have all had other work.

A. —applications, certainly.

Q. But by looking over the correspondence you cannot tell whether you denied or granted the permit?

A. No, I can't. I don't say I denied it—or I did answer it; I cannot tell you that.

Q. Frank Hague has a large following in Jersey City, hasn't he, a man of great popularity?

A. I guess so.

Q. You guess so; don't you know it?

A. Well, it seems so, doesn't it?

Q. It doesn't to me but you know.

A. All right, it does to me.

Q. If Frank Hague had told these mobs that were forming and which might make trouble for you, to be quiet and peaceful, would he as the chief officer of the community have had enough influence to make them lawabiding, not to act as a mob?

MR. HAMILL: I object to that question.

Q. Let me finish my question. Would he——

MR. HAMILL: Object, object.

THE COURT: He could only guess, I think, on that.

A. I am not guessing; Frank Hague can talk for himself on that, Counselor.

MR. HAMILL: I object.

MR. ERNST: Your Honor please, this man says that he looks at the protests and decides from the protests that there will be an unruly mob that he cannot govern.

MR. HAMILL: Now, that is an absolutely illegal, inadmissible question, asking him to characterize another man.

THE COURT: Two o'clock.

(Recess.)

AFTERNOON SESSION.

MR. ERNST: Are the protests here?

MR. HERSHENSTEIN: They are on their way. They will be here any minute.

DANIEL CASEY resumed the stand.

CROSS-EXAMINATION (Continued).

By MR. ERNST:

THE COURT: Now, is there a question?

(Pending question, answer and objection read by the reporter.)

THE COURT: You have no opinion on that?

THE WITNESS: I have got no opinion, your Honor.

THE COURT: I don't see how anyone could have. There are too many psychological elements involved in an opinion.

MR. ERNST: Well, there aren't many more psychological elements involved than appraising from between the lines of newspapers, as to whether a particular crowd of people are coming with brickbats and make a disturbance.

THE COURT: I didn't think that was a very good way of appraising, either.

Q. Have you got the answer to my question, as to whether or not the Civil Liberties Union permit was granted or denied?

A. I can't tell you. I don't see any answer that I sent back to Mr. Rothbard, where I might have. I haven't got a copy of it here. And I don't think that I answered that letter. I might be wrong on it, Counselor.

Q. But you don't know at the moment whether then you denied it or granted it?

A. I couldn't tell you. I would have to see the letter. The copy of it I haven't got.

Q. Now I asked you another question in regard to what you claimed was the evasiveness on the part of the Rothbard correspondence. Have you been able to find a single instance of evasiveness?

THE COURT: The Mercury has arrived.

MR. ERNST: On winged feet.

MR. HAMILL: With the ammunition.

THE COURT: We don't know about that.

A. I cannot find that evasiveness, if you will excuse me. You will have to help me on that, Counselor; I don't see that.

Q. I cannot find any myself: I thought you might want to correct the implication of the letter.

MR. HAMILL: I can find one if you want to call me in.

MR. ERNST: I would like you to indicate it.

MR HAMILL: I am reading from the letter of December 17th: "In any public park or in any plaza whatsoever that you might designate." It is evasiveness in the sense that it does not ask anything definite and it is not the duty of the Director of Public Safety to pick

any place for a meeting; it is the province of the applicant to state where he wants to hold his meeting.

MR. ERNST: What letter is that, Mr. Hamill?

MR. HAMILL: I am talking about the letter of December 17th——

A. Yes, this is it here.

MR. HAMILL: 1937.

Q. And that is what you might have thought was evasive?

A. What is that?

Q. The fact that the application said, "will speak anywhere in town. You designate the place."

A. I designate it?

Q. No, Mr. Hamill points out that what you may have thought was evasive in the application was that the applicant, instead of designating a particular place, said, "You designate the place."

A. Well, that's it, most likely.

Q. That is it?

A. Yes. That is what I must have thought.

MR. HAMILL: I am talking about the letter of December 17th, Mr. Ernst.

MR. ERNST: On what date?

MR. HAMILL: Where he asks on the court house steps. It could be evasive on that, because that's county property, and we have absolutely nothing to do with it.

Q. Now, Commissioner, if that is the basis of the evasion, why did you ever write to Rothbard and say, "designate a particular place"? You did write him about speakers; you wrote him about purposes; you wrote him about the subjects to be discussed. If that is what you meant by evasive, why didn't you ask him to clear it up?

A. Well I don't——

MR. HAMILL: I object to that.

A. Offhand, I can't bring the incident to my recollection, whether I answered that letter or not, Counselor.

Q. You have no recollection?

A. I have no recollection of [illegible].

Q. Now would you say, because you can't tell from the records, whether or not the permit was ever granted or denied, would you say that at this moment it has never been granted or denied?

A. Well I couldn't, no, I wouldn't.

Q. Wouldn't it be a fair statement to say that around December 27th, if you look at the correspondence, you intended to deny?

A. I would not say I intended to deny. I don't remember now, and I couldn't give you a definite answer on it.

Q. Will you grant the permit today?

A. I will not.

Q. Will you deny it today?

A. I will.

Q. You will deny it today. And would you have denied it yesterday?

A. Certainly I would have denied it yesterday.

Q. And what date would you have denied it first?

A. Well, I couldn't tell you that. You asked me—you specified yesterday and today.

Q. And when did you first make up your mind—take a look at the correspondence—that there might be an unruly mob in the event that the Civil Liberties Union application was granted?

A. I couldn't tell you that, Counselor.

Q. You couldn't tell me that. And you are in charge of the administration of the issuance of permits?

A. Yes.

Q. Nobody else in your office would have authority either to deny or to grant, would they?

A. No, they wouldn't.

Q. Now, certainly as late as December 28th you had not made up your mind that there would be an unruly mob, is that right?

A. I cannot state that, I don't remember; I cannot recollect.

Q. Now, let me just refresh your recollection. Around December 28th you wrote a letter asking for more information, didn't you?

A. I did, yes.

Q. You wouldn't have written a letter asking for more information if you had already come to the conclusion that there would have been a mob which you couldn't handle, would you?

A. My mind must have been open when I wrote that letter.

Q. Must have been open when you wrote the letter. Have you got the protests here?

MR. HAMILL: I have whatever is in this, Mr. Ernst. I shall give it to you just as I have it.

MR. ERNST: If your Honor please, I would like to save the time of the court by having my associates look through these files for this purpose. I want to find out what, if any, protests were in the possession of the Director of Public Safety at the time of his denials of the permits. A good many of them I see on the face of it came in long after and could not have been used by him for the purpose of making up his mind. I think if we take out a few moments while I go on with another line of inquiry it will save the time of everybody.

Q. When people indicate that there will be a mob, Director, which may interfere with the meeting, do you ever warn the spokesman for the mob or the people that they should not act as a mob and break up meetings?

A. I told you, Counselor, this morning that that is the duty of the Chief of Police.

Q. But you never do it?

A. I have got nothing to do with that.

Q. Now, did you have anything to do with a meeting at the Armory on December 28th, I think it was?

A. I was there.

Q. You were there. Did you have anything to do with the organization of that meeting?

A. Of the meeting, no, I wasn't concerned with that meeting.

Q. You didn't have anything to do with the sending out of notices for it?

A. Only just sending notice to the Chief of the Police Department to police it.

Q. Did you have anything to do with the distribution of postal cards by local political clubs, churches and others to get the crowd out to the meeting?

A. I had not.

Q. You had nothing to do with it?

A. Nothing to do with it. I am not a politician.

Q. What?

A. I am not a politician.

Q. Did you or did you not receive from the office of the Mayor a typewritten memorandum urging you to get all of the people in your department to go to the meeting at the Armory? I will show you a copy of the notice.

A. O.K.

Q. And see whether that refreshes your recollection.

Mr. Ernst: If your Honor please, I have got a copy here which contains typewritten on it—I have received a great number of copies of notices purporting to go from the Mayor's office, signed "Message from the Mayor's Office." Important notice. All veterans report at Armory tonight, Tuesday, December 28th, at 8 o'clock p. m. sharp. This is important."

I would like to refresh the witness' recollection on my question, and I want to call to your attention that I am turning over the top of this piece of paper, which I will be happy to show you, because it exposes the

initial of the person in the department who mailed the notice to me.

MR. HAMILL: Well, now, if your Honor please——

MR. ERNST: And my only purpose of turning it over is not to conceal anything that is part of the notice, but to preserve the liberties of some human being.

MR. HAMILL: We want to know, of course—Mr. Ernst has no right to read that document in court before it goes into evidence, but, of course, his purpose is plain; he wants that for the newspapers. But even so, that cannot be used until we know its authenticity.

MR. ERNST: I am just using——

THE COURT: Do you want to show it to Mr. Hamill?

MR. ERNST: I am just using it to ask the witness if it refreshes his recollection. Then I may determine whether I will put it in.

MR. HAMILL: Determine whether it is genuine, that is all I can say to you.

MR. ERNST: No, no; he can't testify whether it is genuine or not. All I want to do is to see if this refreshes his recollection, as to whether or not he did not receive from the Mayor's office advice of a similar nature, urging that all department heads get the veterans out for the meeting.

A. I didn't——

MR. HAMILL: Well, he can answer that question. I mean you don't intend to put that in evidence.

MR. ERNST: No, no.

A. No, I didn't issue any orders.

MR. HAMILL: I don't know why he shouldn't answer it.

A. I didn't receive any orders to get all the veterans out or anybody.

Q. Did you receive any message from the Mayor's office?

A. No. This is the first time I ever saw anything like that.

Q. Did you ever see anything like that before?

A. Never. This is the first time I ever saw it, when you showed it to me.

Q. Did you or did you not see or purchase or order the printing of postal cards distributed by the Democratic clubs, or some of them, of the city, urging people to go to the Armory meeting? I will show you samples of those cards. I have just a few of them. Seventh Ward Democratic Club, Eighth Ward Democratic Club, Fourth Ward —(showing to the witness).

A. No, I never saw any of them.

Q. You never did?

A. And I had nothing to do with them. I don't know anything about them.

Q. You had nothing to do with the ordering, the printing or the distribution?

A. I didn't order them or have them printed.

Q. You were at the Armory meeting?

A. I was.

Q. Did you make a speech there?

A. I did not.

Q. The Armory meeting was an influence on you in making up your mind as to whether or not there would be a disturbance through an unruly mob if permits were granted to the Civil Liberties Union and the CIO?

A. Partly.

Q. Now, you knew, did you not, that the mob might take the situation in its own hands?

A. Well, several thoughts went through my head on that. I used precaution the way I felt about it, tried to avoid trouble.

Q. You what?

A. I used precaution, tried to avoid trouble.

Q. That is one thought. What other thought went through your mind? You said several.

A. Well, the thought of the mob getting away from me, having somebody killed, generally what would go through any man's head where he thinks the trouble is going to happen and in his best judgment he can avoid it.

Q. You wrote in a letter of December 30th, which is in evidence, "On the evening of December 28, 1937, a great mass meeting was held in the armory at Jersey City attended by over three thousand persons, all of whom were veterans."

A. Right.

Q. How do you know all of them were veterans?

A. Well, I take that from what I read in the papers, they were veterans. I had no way of finding out, I didn't go there.

Q. You didn't go there?

A. I didn't go to that meeting where the three thousand veterans were.

Q. In the armory?

A. I didn't go there.

Q. At that meeting you wrote "A resolution of opposition was passed against the granting of the permit."

A. Right.

Q. Then you go on to say "Violent disorder was threatened on the part of the veterans in case the meeting was held." Do you recall having written that?

A. Yes, I do.

Q. Now, when there is a threat like that made would you ordinarily communicate with the Chief of Police to keep an eye on this crowd that is threatening violence or would you do nothing about it?

A. I spoke, I think I spoke to the Chief about it.

Q. And to what effect generally, not the conversation?

A. Well, I told the Chief that I didn't want any violence to happen in the city.

Q. And did you tell the Chief to do anything in relation to these people who you say in your letter were threatening violence?

A. I asked the Chief to check up on it.

Q. Did he check up, do you know?

A. He couldn't find anybody—there was a statement from one man there after the check-up that—well, he was excited over it and I guess he was saying what he didn't mean.

Q. You mean a statement that he threatened violence?

A. And there was no meaning to it.

Q. So you came to the conclusion after talking to your Chief who made the investigation that there was nobody there who really meant to threaten violence, is that right?

A. Well, that is the one that I have reference to.

Q. Just one person?

A. As I said before, Counselor, the psychology of mobs or crowds when they get together is something that no man can fathom.

Q. Let's just leave that out, you have said it many times. I want to ask you just simple specific facts, Commissioner.

A. That's what I am trying to tell you.

Q. You said that violent disorder was threatened on the part of the veterans in case the meeting was held.

A. Right.

Q. I understand you asked the Chief of Police to investigate and the Chief of Police reported but one person that he could find who threatened violence but he didn't quite mean it, is that it?

A. That's the way that I understood it.

Q. So the balance of the three thousand people didn't worry you because you felt after investigation of the Chief of Police that they would commit no violence?

A. I didn't say that; I acted the best of my judgment in refusing that permit.

Q. I am not asking about that.

A. I weighed that question in my mind and that is the solution I came to in refusing the permit.

Q. I have heard that many times. If you will follow me we will finish quickly.

A. I am trying to, that is my only answer, Counsel.

Q. But your Chief of Police made an investigation as to the threats of this mob?

A. It wasn't the threats of the mob, it only mentioned one person in the paper, I think.

Q. You said here in your letter "Violent disorder was threatened on the part of the veterans." You didn't say some of them—the veterans—"in case the meeting was held" and I understand that you asked the Chief of Police to look up those threats.

A. I did.

Q. And his report to you was what?

A. His report to me, if I remember rightly, we had a verbal conversation on it, was that they were all up in the air about these people coming in and they weren't going to let them speak; that was the general feeling that was there, that he could find out.

Q. And therefore his report was, as I understand you now, that these people's threats were meant and that they meant to stand by them?

A. Yes.

Q. Is that right?

A. There would be trouble.

Q. That is right. And that they would make trouble.

A. That is it.

Q. Now you went on further to say, "Announcements were made from the floor and these announcements had the approval of the meeting, that if I should refuse to honor the veterans' protest and grant a permit for the meeting, the veterans would take the matter into their own hands and see to it that the meeting would be broken up."

A. Right.

Q. Now what did you do after that?

A. What did I do?

Q. Yes. Denied the permit, didn't you?

A. I denied the permit as to it.

Q. All right. Now in other words you were convinced, on the basis of your investigation as indicated here, that because the veterans had said that they would take matters into their own hands, that you had better deny the permit in order to have peace and order?

A. That is is.

Q. Is that right? And this consisted of approximately three thousand people at a meeting, is that correct, at this meeting?

A. Three—that's what they claim were there.

Q. They claim?

A. I don't know what was there.

Q. Now did you at the same time in the course of your investigation discover that the County Council of Veterans of Foreign Wars of Hudson County held a meeting on December 29th in West New York and took a position in regard to this same matter? Did you ever run across that?

A. Offhand I couldn't say.

Q. You are familiar with the County Council of Veterans of Foreign Wars?

A. I am not. I couldn't tell you who the head of it is.

Q. You don't know who the head of it is?

A. No.

Q. You don't know about it. Now this veterans' group that met at the armory, was that an organization or was it just a lot of veterans?

A. I couldn't tell you that.

Q. You don't know that, so as far as you know it was three thousand people gathered together?

A. That is all I know about it.

Q. That were supposed, according to the newspapers, to be veterans; they threatened disorder, they threatened to take the control in their own hands if you granted the permit, and you denied the permit?

A. I denied the permit to stop trouble and violence, as I stated before. That was my reason for it.

Q. Now if you had known that the County Council of Veterans of Foreign Wars had held a meeting on December 29th in West New York, debated the matter of denial of permits for two hours after regular notice had been sent to its entire membership, and as a result of that debate they did not come out and approve the Civil Liberties Union or the CIO but they condemned the denial of permits, would that have affected your judgment?

A. It would not.

Q. It would not. In other words, no matter how many resolutions that came from other sources, stating that the permit should be granted, you would still be worried because these veterans threatened to take over the matter into their own hands?

A. I would take it into consideration and use my best judgment on it.

Q. But these other opinions of organizations of veterans wouldn't have altered your opinion?

A. Not in the least.

Q. Now you know, of course, of the Council of U. S. Veterans Inc., Mr. Robbins, Commander?

A. I don't even know him.

Q. You don't know abont him. Well, if you had known——

A. I might know him but at this time—if you give me his name. I don't know him by name. I might know him by sight.

Q. Well, it is just one of the leading organizations of veterans and I thought you might know it.

A. No, I don't.

Q. If you had known that that organization of veterans had taken an official position through resolutions condemning the position of Mayor Hague on denial of permits, that would not have influenced your judgment in denial of the permit?

A. Now, just a minute. You are mentioning there Mayor Hague. I don't know what Mayor Hague has got to do with it. I denied the permit.

Q. Well——

A. I denied that permit.

Q. Let me just ask you on that.

A. Yes, sir.

Q. Do you know as a matter of fact that Mayor Hague has made statements that none of these permits would be granted?

A. I am not accountable for Mayor Hague's statements.

Q. I didn't ask you that. I just asked you, do you know whether he made such statements?

A. He has.

Q. He has. Now if the Council of U. S. Veterans, if you had known that they had passed resolutions concerning the action of Frank Hague and Director Casey in respect to the denial of permits, would that have altered your opinion?

A. It would not.

Q. It would not? The fact—let me put it this way. You read the papers pretty generally?

A. Certainly.

Q. Do you ever read the New York *Times?*

A. I do.

Q. Dou you read the *Tribune?*

A. I do.

Q. The *Telegram,* ever, New York *Telegram?*

A. Yes, sir.

Q. New York *Evening Post?*

A. I do.

Q. Do you ever read the editorials in any of those papers?

A. Just a moment. What was that you said?

Q. New York *Evening Post.*

A. No, I don't.

Q. You don't read it?

A. I don't read it.

Q. When is the last time you read the *Post?*

A. I don't know if I ever read it.

Q. Why don't you read it? On account of the attacks——

MR. HERSHENSTEIN: Now, if your Honor please, I object to that.

A. Well, that's making a joke out of it, Counsellor.

Q. Now the New York papers, the *Telegram*, the *Tribune*, the *Post*—the *Times*—had editorials in regard to the denial of permits. Did you ever happen to read any of those?

A. I have read them, yes.

Q. What?

A. I have read them.

Q. You have read them. And if it is a fact that those papers condemned the position of Frank Hague and Director Casey in the denial of permits, would that have had any influence at all on your decision in denial of the permits?

A. It is just their opinion against mine.

Q. I know that. They differ with you.

A. They differ.

Q. But would it have had any influence on you?

A. It wouldn't have influenced me in the least.

Q. No. Now, as a matter of fact you know that those papers and others condemned the denial of permits, and it did not influence you?

A. It didn't influence me in the least.

Q. The fact that men like Father Ryan, John A. Ryan, of Washington, and others, issued public statements that appeared in the press, condemning Frank Hague, and you, and the city administration, for the denial of permits——

MR. HAMILL: I object to all that. We don't know whether that is a fact or not, and we are not going to

have evidence slipped into the record under the form of a question. I object. It is an old discredited trick.

MR. ERNST: I will get it in.

MR. HAMILL: Well, get it in legally.

Q. Do you remember reading in the newspapers a statement issued by Father John A. Ryan of Washington, condemning the denial of permits and civil liberties?

MR. HAMILL: I object to that. I object to the form of the question.

MR. ERNST: He can answer yes or no.

MR. HAMILL: I object and ask that it be stricken out. I had no time to object before it was offered, so that I cannot be accused of having listened to it and then found out I didn't like it. It had to be expressed before I could object to it.

THE COURT: Just answer yes or no.

A. I have never read Father Ryan's article, Monsignor Ryan's article.

MR. HAMILL: Your Honor allows the qeustion?

THE COURT: I have allowed him to answer yes or no. He said he never read it.

MR. HAMILL: I ask that the question be stric —

MR. HERSHENSTEIN: That the answer be stricken.

MR. HAMILL: That the question be stricken out.

THE COURT: That the question and answer be stricken out.

MR. HAMILL: All right, that the question and answer be stricken out.

MR. ERNST: The question is entirely proper, your Honor. I merely asked him if he knew.

MR. HAMILL: The question is not proper.

MR. ERNST: He didn't know, so I am not going further.

MR. HAMILL: All you can do in the question is indicate what it is you want to know. Did you ever read a statement regarding Mayor Hague by Father Ryan? That would be the question. But not go in and state the contents of it, unless he is going to get a number of those statements.

MR. ERNST: If your Honor please, there might have been something to Mr. Hamill's point of view if the witness had not indicated that one of the main foundations for the determination in his mind of this great discretion vested in him by the ordinance was what he read in the newspapers and between the lines. He opened to the door to that completely, and he cannot now preclude me from asking if he remembers seeing this or that in the newspaper.

MR. HAMILL: That doesn't excuse you from putting in illegal evidence.

MR. ERNST: Oh.

THE COURT: Go ahead. There is no evidence on that point at all.

Q. Now, Director Casey, do I understand that the protests which have come here pertaining to the subpœna are all the protests that you have in your possession or that you have seen?

A. Well, it is hard to say; I couldn't tell you now who it was that sent them, offhand.

Q. Have you inquired, did you get all the papers there are?

A. I didn't see the papers that were brought here.

Q. Well, can you ask the person you sent to find out?

MR. HERSHENSTEIN: We never saw them, we handed you the envelope.

MR. HAMILL: I never saw them. What happened was this witness telephoned and the papers were sent over.

THE COURT: Show them to Commissioner Casey.

MR. ERNST: It won't do any good to show them to him, your Honor. I must some day get the affirmative statement that this is all so that they don't come back later on cross-examination with some other nonsense, some other protests.

MR. HAMILL: I object to "some other nonsense."

MR. ERNST: I am willing to face all the instruments they can give to me, from the Mayor's office and everywhere.

THE COURT: Could you tell by looking at them, Commissioner?

THE WITNESS: I couldn't tell, your Honor, what I received; I just looked at them.

MR. ERNST: Could I suggest this, that maybe Mr. Hamill could telephone or have someone telephone to find out from someone he has confidence in in Mr. Casey's office as to whether or not we have everything from that office?

MR. HAMILL: No, I am tired running errands for you. You will have to do that for yourself.

THE COURT: Maybe the Mercury here could tell us.

MR. HAMILL: Ask Mercury; he is wing-footed, and can tell.

MR. ERNST: Maybe we could rely on the subpœna duces tecum. This is no favor to me, this is no errand: this is the mandate of this Court.

MR. HAMILL: And he has brought you all the papers that were given to him, which I assume were all the papers that there are, although I don't know.

MR. ERNST: I cannot take your assumption, Mr. HAMILL.

MR. HAMILL: I cannot take it myself, I don't know.

MR. ERNST: It has been wrong three times this morning; each time you were wrong.

MR. HAMILL: I think when his representative was in my office yesterday he told my clerk and Mr. Glavin that he didn't want them. That is what I was given to understand.

THE COURT: Do you want the protests that are here? Now, will you look at them? Can you tell by looking at them if they are all right?

THE WITNESS: Well, I couldn't, your Honor, because as I say, they come in, I don't know how many I got, I never checked up on them.

MR. ERNST: Your Honor, please, I——

THE WITNESS: (Interrupting.) I never index as to who I get a letter off of and file it away.

MR. ERNST: I think there ought to be an instruction to somebody to communicate with the office of Mr. Casey to find out if there is anybody there who can testify that this is all there is in the way of protests.

THE COURT: Where did you get them from, Mr. Mercury?

A VOICE: They come from Commissioner Casey's office.

THE COURT: Who from there?

THE VOICE: Well, I don't know. I telephoned over and they sent a man with them to save time.

THE COURT: A man brought them; is he here?

THE VOICE: A man brought them to me.

THE COURT: Is he here now?

THE VOICE: No, I asked for all that they had.

MR. ERNST: I think I can simplify it. If we could get a ruling from you on this point, I am willing to assume that these are all the protests, provided, if there is an offer to introduce any further protests by the defendants, on our motion to preclude, you will preclude, which I think is fair and decent.

MR. HAMILL: It is very adroit and purposeful, but it isn't fair and decent. You are asking this witness are those papers the only papers which motivated him in making his decision, and he says "I don't know." Now, even if they were all the papers, how much further do you get in pressing your question? He says, "I don't know whether they were or not."

MR. ERNST: There is a subpœna out——

THE COURT: There is a subpœna for all the protests, Mr. Hamill. Now, at some time or other that subpœna has got to be returned. Do you agree that it has been returned with all the protests?

MR. HAMILL: Yes, yes. I don't know whether those are all the protests; I know that they came over here.

THE COURT: You agree that the subpœna has been returned?

MR. HAMILL: I understand there is a subpœna which has been returned. Why doesn't counsel show us the subpœna if he has a copy of it?

MR. ERNST: We gave it to you. We handed it to you.

MR. HAMILL: When?

MR. ERNST: Mr. Casey got it. That is why he brought us a few papers.

MR. HAMILL: Have you it here this minute?

MR. ERNST: He has got it.

THE WITNESS: It is in that envelope there.

MR. ERNST: We don't retain the subpœna, we leave it with him.

MR. HAMILL: Well, all I can say is we cannot find it, your Honor, we have hunted for it. Have you a copy of it?

MR. STOFFER: Yes, I turned it over to you.

THE COURT: The only thing is, Mr. Hamill, we don't want to have protests turning up every other day so we want to find all there are and put them in.

MR. HAMILL: My only point is I don't know what those are.

THE COURT: You must know where they are.

MR. HAMILL: I only know they came over.

THE COURT: Someone must know whether those are all there are.

MR. HAMILL: I suppose that is so and yet in a public office it may be that nobody knows whether they are all there are. Now, I know that seldom happens but it could happen.

MR. ERNST: Your Honor, there is a mandate out of this Court to get instruments which we are entitled to. We were told first they couldn't be brought because it would upset the office, they were so tremendous, like the Register's office; it turned out to be three little files. If your Honor please, I am perfectly content to accept the documents now in Court as a satisfactory response

to the subpœna provided it is understood that any additional material will be precluded on my motion; otherwise I will have to wait until you get me somebody and I will subpœna everybody in the office to find out whether the subpœna has been obeyed. It is not my subpœna, it is the Court's subpœna.

MR. HAMILL: We will not enter into any such stipulation.

MR. ERNST: I didn't ask you to stipulate, I asked a ruling.

MR. HAMILL: We do not know and cannot agree to that; that is our situation.

MR. ERNST: Then we will have to produce some more people from the Commissioner's office.

MR. HAMILL: All right.

MR. ERNST: Your Honor, please, I ask Mr. Hamill if he will require a subpœna. I have to get the entire force in Mr. Casey's office.

MR. HAMILL: All right.

MR. ERNST: If you are going to run me around one after the other——

MR. HAMILL: If your Honor please, I am tired of being called upon by the other side to prove their case.

THE COURT: No, but you have to answer the subpœna.

MR. HAMILL: I had the same thing from Mr. Frazer. "Would I admit that these industries are in Jersey City." Now, we are not asking any favors and we are giving none. You will prove your case according to the law without asking any favors from me because they will not be granted.

MR. ERNST: Your Honor, please, I am now forced to the position where an order of this Court having been

outstanding in the hands of a high official of the community, an unsatisfactory response having been made to the subpœna duces tecum, we tried to facilitate it by having somebody look at the material, we are told that it will come over here,—we are now told that nobody can testify whether it is all here. I now call upon your Honor to consider whether it is not high time to entertain a motion for contempt of the Court's subpœna duces tecum.

MR. HAMILL: Now——

MR. ERNST: There is no reason in the world—I am not asking Mr. Hamill to prove anything. I wanted to facilitate it, and I do think there is no possible other way out. Here is an order outstanding, they haven't responded to it.

MR. HAMILL: Now, if you have finished I want to be heard, of course. The subpœna duces tecum was issued by the solicitors for the complainant under, of course, the rule which permits a solicitor to be an agent of the Court for that purpose, and it was not an order vised by the Court before signing; it was an order prepared by the solicitor for the complainant, and, of course, it has no particular interest in wanting it. Then we came here and there were no papers here and your Honor directed that an agent, a lawyer, to be selected by Mr. Ernst go to Jersey City and obtain the material. That man was given every opportunity and we thought the matter was settled. Then we were not to bring that material in today because the investigation was made by his attorney. We came here and didn't have the material. We were not to have it. Then your Honor told us to get it. We did the best we could. This agent at our table telephoned and said, "Send over all the material you have." Then they asked the Commissioner, "Is this all the material you have?" He says, "I don't know." And the best we can say is that we

told a man "Send over all the material you have"; whether he complied with that or not there is nobody in this court room now who can say. Now, that is our situation, and he asks for an order of contempt. It would be a very nice thing to argue on a question of contempt just how far that subpœna ought to extend and whether he can give a blanket subpœna to bring in all the public records in a public office.

If it causes him a great deal of difficulty to prove his case, well, that's one of the difficulties trial lawyers must contend with.

THE COURT: Well, aren't we wasting time, Mr. Hamill? Are these all the protests, or aren't they?

MR. HAMILL: I don't know.

THE COURT: You can find out.

MR. HAMILL: I will say this, that I never saw the protests. I don't know what is in the papers now, and I don't know what those papers are, except somebody has been speaking about them as protests.

THE WITNESS (aside to the Court): When he was over to my office yesterday, your Honor, they asked him if he wanted them, and I was given to understand that he said no. They asked him if he wanted them brought here this morning.

THE COURT: Doesn't your clerk know all there are, Mr. Ernst?

MR. ERNST: No. He was told, and this is his report to me, that there were approximately a hundred total.

THE WITNESS: He seen them.

MR. ERNST: Well, there aren't a hundred, as I see them here. Most of these that appear here are unrelated in a measure to the particular issues, because they fell way late in May, in June, a good many of them.

But I don't care whether there is one or a thousand. All I want to know is that I am not——

THE COURT: Did he see them?

MR. ERNST: No, he didn't even see them. His report to me on that subject, typewritten, was as follows——

MR. HAMILL: May I ask what paper you are referring to, Mr. Ernst, so I may follow you?

MR. ERNST: I am referring to a confidential report made to me by Mr. Britchie, who was over in the office with Mr. Glavin.

MR. HAMILL: I didn't see that. You wouldn't let me in on that.

MR. ERNST: I haven't it handy now, your Honor, but my impression is that he found about a hundred. Clearly we weren't to send a man over there just to have the man just look at them. Clearly we couldn't have that man testify as to what was in them. The purpose of having the man go over was that I thought there were thousands of letters and files, and we didn't want to disturb people by bringing them all over. Then I found out there are a hundred. I asked them to be brought here. Your Honor will have to resolve the problem.

MR. HAMILL: If he had sent—if your Honor please, as I understand, the purpose of sending the lawyer over was not only to look at them, but to copy such parts as he deemed necessary and relevant, and then I think it would have come under the rule of an examined copy, and it could go in whether we liked it or not. But if some officer read the copy he made and said, "Yes, you have copied it correctly," we wouldn't object and shouldn't object, and ought to be overruled if we did object.

Q. Mr. Casey, will you look these over and tell me if you know of any other protest that isn't here? Are there some more there? I will give you the balance here. Look them through and see if you know of any others that are not there?

A. Well, that would be a hard thing, Counsellor, for me to say.

Q. It would be impossible, wouldn't it?

A. It is impossible for me to say that. You know that.

Q. Sure. The only way you can really find if they are all here is to find out from the person responsible for filing them, whether they have really delivered them all. Can't you easily go to the telephone and find out in a few minutes whether they sent over everything that is there in the files on protests? Can't you do it in two minutes?

A. Why yes. There is nothing to prevent it. I have got no objections to it. I think——

Q. Will you kindly do so then?

A. Well, if I am told to do it I will have to do it. I don't know——

MR. ERNST: Well, will the court permit the witness to do so?

A. (Continuing.) I am not a lawyer. I don't know what I should do in a case of this kind?

MR. ERNST: The lawyer was not handed the subpœna. This man was——

THE COURT: You don't mind the Commissioner finding out, do you, Mr. Hamill? Surely not.

MR. HAMILL: Finding out whether he has been——

MR. ERNST: Finding out whether he has been responsive to the subpœna. That is all there is to it.

MR. HAMILL: Whether he has been responsive? I can answer it now. He has been.

MR. ERNST: He has been?

THE COURT: Well, then, no more protests are in his office?

MR. HAMILL: He has answered the subpœna.

THE COURT: What?

MR. HAMILL: He has answered the subpœna.

MR. ERNST: Oh, no.

MR. HAMILL: And as far as his knowledge goes, all of these came. He doesn't know whether they are all the papers or not.

THE COURT: We are trying to find out. Aren't we wasting a lot of time and being a little bit too lawyer-like, Mr. Hamill?

MR. HAMILL: You know here is the situation——

THE COURT: We could subpœna a lot of other people and find out, but what is the use? The telephone is available.

MR. ERNST: Your Honor, may I suggest that the witness who was handed the subpœna has indicated that if he thought it was proper, he could go to the telephone, call up the people in his office who are responsible for filing this kind of document away, and ask them when the telephone call came in to have Mercury bring over the material. That's how simple it is.

THE COURT: You don't object to that, do you?

MR. ERNST: Unless there is something to be concealed.

MR. HAMILL: No, there is nothing to be concealed.

MR. ERNST: Why don't you let your witness telephone and find out?

MR. HAMILL: For the reason that he is not obliged to do that, and there is no aid going to be given. You

get your evidence as you should get it. We are under——

MR. ERNST: I move, your Honor,——

MR. HAMILL: I am not going to have you stand up and say "since he committed contempt, we will let him slither out by going to the telephone."

Now he did not commit contempt of court. You will have to get your evidence yourself.

MR. ERNST: May I ask whoever gave the message to bring over the material, whether they also telephoned for the alleged protests which were in the Mayor's office?

A VOICE: I did.

MR. ERNST: You did. And those were, as far as you know, delivered here also?

MR. HAMILL: No, he didn't go there. He only telephoned.

MR. ERNST: All right. Now, if your Honor please, on the theory, on the assumption that the papers now in this court room relating to the subject of protests are all the protests in the Mayor's office and in the office of the Director of Public Safety, I move at this time to preclude the introduction of any protests on the part of the defendants in respect to meetings out of doors.

MR. HAMILL: I object to the motion on the assumption he said that these are all that are there. There is nothing in the evidence yet to show that they are all that are there. So it contains an assumption of fact not justified by the record.

MR. ERNST: I will add an additional assumption, your Honor, if it will satisfy Mr. Hamill.

MR. HAMILL: It doesn't satisfy me.

MR. ERNST: To the effect that since the subpœna had been served and this is the response made to it in the court at this time, I predicate my motion also on that fact——

MR. HAMILL: Now, he is not—excuse me. Have I interrupted you, Mr. Ernst?

MR. ERNST: Go ahead.

MR. HAMILL: I am sorry.

MR. ERNST: I have made my motion. I would like a ruling on it, your Honor.

MR. HAMILL: He is not the custodian of all of the protests in the Mayor's office. He is not the custodian of any of them in the Mayor's office.

MR. ERNST: I will accept the motion to preclude at this time, limited to all the protests made to the Commissioner of Public Safety.

MR. HAMILL: If he knows.

MR. ERNST: My motion has no—"if he knows" about it. There may be others.

THE COURT: Well, who knows? Who knows?

MR. HAMILL: I don' know. Ask the Commissioner.

THE COURT: The Commissioner wants to help.

MR. HAMILL: Ask the Commissioner. I don't know.

THE COURT: The Commissioner wants to be more obliging than you are. He wants to help. He is not a lawyer, so he is more helpful than most lawyers. He doesn't know. He can't tell, he said, without telephoning. Now you don't want him to telephone.

MR. HAMILL: No, I am not going to—my point is that Mr. Ernst has been charging that we have been disobeying a subpœna. Now we are not going to grant a favor in the face of a threat.

THE COURT: Well, he will withdraw the charge if you will let him telephone.

MR. ERNST: I have withdrawn the favor, so-called I have made a motion, your Honor.

THE COURT: If Mr. Ernst withdraws the charge will you let the Commissioner telephone?

MR. HAMILL: May I examine him, without leading him now?

THE COURT: Oh, surely.

MR. HAMILL: May I examine him?

By MR. HAMILL:

Q. How many letters regarding—and I don't want to lead him—how many letters regarding the subject matter of meetings do you think you have received—not do you think, but do you estimate you have received?

A. I couldn't tell you that. I paid no attention to them. As I got them, they were filed away. I handed them to my secretary to file them away. I couldn't tell you how many.

THE COURT: He can tell if you let him telephone his secretary. That is all he wants to do.

MR. HAMILL: All right. Let him telephone.

THE COURT: We will take a ten-minute recess. You can telephone then.

MR. HAMILL: If the court wants it, we will do it. And while I am ordinarily concessive and courteous to counsel, I don't think their conduct with the Commissioner warrants it, and I am doing it because the court asks it.

THE COURT: Mr. Ernst withdrew his charge.

MR. HAMILL: Sir? He withdrew his charge?

THE COURT: He withdrew his charge about your contempt.

MR. ERNST: My charge for contempt, you mean, yes.

MR. HAMILL: Yes.

MR. ERNST: Temporarily, temporarily.

MR. HAMILL: We are very much disturbed over that charge for contempt, yes.

THE COURT: It was not directed against you, Mr. Hamill.

MR. HAMILL: Yes.

MR. ERNST: If your Honor please——

THE COURT: He is going to telephone. We will take a ten-minute recess.

MR. ERNST: Yes, but let's find out what he is going to telephone for, so we will get over this hurdle. It is just too foolish.

THE COURT: You are going to telephone and find out if there are any more protests, is that right?

THE WITNESS: That is right.

MR. ERNST: In his office.

THE WITNESS: In my office.

MR. ERNST: And also, the witness having testified that some of them were in the Mayor's office——

MR. HERSHENSTEIN: No, he can't tell about that.

THE WITNESS: That is ridiculous. I can't say that.

THE COURT: No. I think that ought to be done directly.

THE WITNESS: I am not accountable for that. I am accountable for my own actions and protests.

MR. HAMILL: Mr. Hershenstein says that the Mayor's office has thousands and thousands of protests.

MR. HERSHENSTEIN: I have seen them. Now, what they might contain, I don't know.

THE COURT: You had better issue a subpœna for the other protests.

MR. ERNST: We are going to issue those, of course.

(At this point a short recess was taken.)

(After recess.)

Q. Your verdict, Mr. Director?
A. I am.
Q. Is what?
A. What's that? I have done what you requested.
Q. What is the verdict?
A. They will be over, I order them sent right here.
Q. That is, ordered them from your office.
A. Ordered them from my office.

MR. HERSHENSTEIN: May I state to the court—I said it to Mr. Ernst a minute ago—there are a number of protests that have been filed in the office of the Mayor which have been received in the first instance by the Commissioner of Public Safety. Those have been segregated and are on their way over, and Mr. Ernst wanted us to state approximately the number. I would say that there are about fifty or less. I don't think there is over that.

MR. ERNST: I understand that there will be added to the material that is on the way over now from your office not more than one hundred, that gives you latitude—additional so-called protests, against meetings.

MR. HERSHENSTEIN: Pardon me. I don't think you ought to limit it to that because among the papers which we have produced——

MR. ERNST: One hundred additional.

MR. HERSHENSTEIN: No, no, no. In addition to what Mr. Ernst has just described we have produced

two petitions here, if your Honor please; each petition your Honor will note from its size and bulk and pages contains thousands and thousands of individuals who have signed the petitions and protests to this meeting. There is one.

MR. ERNST: But we will call that one protest.

MR. HERSHENSTEIN: Well, I would like the court to know that, what that one protest means.

MR. ERNST: Oh, yes. That is only one protest, no matter how many signatures.

MR. HERSHENSTEIN: And here is another one.

MR. ERNST: That's right.

MR. HERSHENSTEIN: Let the record state what they are.

MR. ERNST: As I understand, there may be one hundred more which will come over from the Mayor's office which were originally received by Mr. Casey.

THE WITNESS: From the Mayor's office, from my office.

THE COURT: From both places.

THE WITNESS: From both places, yes.

MR. ERNST: No, I understand now that Mr. Casey is having brought over the balance from his office.

THE WITNESS: That's it. I told them to bring anything that's there.

THE COURT: You will get the balance from the Commissioner's office and from the Mayor's office some are coming too.

MR. HERSHENSTEIN: Yes.

MR. ERNST: And those I understand, your Honor please, will not exceed one hundred in number, defined

as a protest, no matter how many signatures, and then with the material from the Commissioner's office as well as the Mayor's office we will have had a complete response to the subpœna and no other protests.

MR. HERSHENSTEIN: As far as we can locate now.

THE WITNESS: Written. You are talking about written. I have had plenty of oral protests.

MR. HERSHENSTEIN: Will you explain, Mr. Casey, that the letters referred to which are a matter of record in the Mayor's office will not be available until tomorrow because there are so many of them they will have to be segregated?

MR. ERNST: That's right. I just want to know that the additional material which will come is up to one hundred from the Mayor's office.

MR. HERSHENSTEIN: That's right.

By MR. ERNST:

Q. Now, Mr. Casey, I ask you to look over these protests, eleven in number, and I ask you if any one of them is a protest indicating that the permit for the Civil Liberties Union meeting or the CIO meeting should not be granted and whether any one of them mentions the question of a permit for an outdoor meeting at all.

MR. HERSHENSTEIN: Well, as I understand, if your Honor please, what Mr. Ernest required were all the letters of protest in reference to these meetings or the subject matter in dispute. Now, Mr. Ernst——

MR. ERNST: Your Honor, I have simplified the matter, if you will let me proceed in my own way; I have simplified the matter by taking out from all of the protests every instrument that is dated before January 1, 1938. The permits were before the Commissioner during that interval and so I want to get fixed the protests

as to specific meeting permits of CIO or ACLU up to the period of January the first. That is the time during which he made his investigation and decided that the mob would make disorder.

MR. HERSHENSTEIN: Well, I think that the witness should have an opportunity to examine every piece of paper——

MR. ERNST: That's right.

MR. HERSHENSTEIN:—In this envelope he has produced. You are giving him a segregated number and saying "Is there anything there in reference to that matter?"

MR. ERNST: I am asking him if he finds anything there and then I will ask him to look over the others and find out if he finds anything after January first. Very simple.

A. Look at those two, Counselor (handing counsel papers).

Q. I showed you eleven purported protests and asked you how many of the eleven, all of them antedating January 1, 1938, specifically referred to the granting or denial of a permit for a meeting of the American Civil Liberties Union or the CIO?

A. Those three, I guess. The CIO are mentioned in them.

Q. Yes. So three of these related to permits. Now, Commissioner, I want to show you a bunch of letters, twelve letters dated around May 20, 1938, and ask you look them over and see if they were not copied from the same master letter, because the wording is either identical or substantially the same?

MR. HERSHENSTEIN: If your Honor please, I object to the question, whether they were copied from the same master letter. That may be a conclusion. They

may be alike. That is the only thing this witness can say.

THE COURT: Are they in the same language? Is that the point?

MR. ERNST: Verbatim, practically. He can answer it in any way he wants. I just wanted the admission that those eleven were virtually the same letter.

Q. Substantially the same letter?

A. They were written by different people and the wording is different.

MR. HERSHENSTEIN: A little louder, please.

A. The wording is different. Some of them are very brief; some of them mention names and others don't.

Q. My question was, are they substantially the same?

A. Practically.

Q. Practically.

MR. ERNST: I want to mark for identification twelve letters just referred to by the witness.

(Marked Exhibit P-18 for Identification.)

Q. Now, Commissioner, will you look over what is the balance of the papers that have been brought here as protests and see if you find a single protest that is dated before January 1, 1938.

Q. See if you find a single protest that is dated before January 1, 1938. Have you looked at these, Commissioner?

A. No, I haven't.

Q. Look at those few, just the date. I just want to know if it is before January first.

A. There is nothing there.

MR. ERNST: Now, your Honor please, I think I had better get this record clear. We have presented to the Commissioner Exhibit for Identification 18, all of which letters were dated around May 20th, and he has testi-

fied that they are substantially the same. I have shown to the Commissioner another batch of letters dated prior to January 1, eight in number, and asked him whether any of these alleged protests dated before January 1, 1938, related to protests as to meetings of the CIO or ACLU, and he indicated they did not, and I would like those marked for identification.

(Marked Exhibit P-19 for Identification.)

MR. ERNST: I have exhibited to the Commissioner all of the balance of the protests except for six documents and he has testified, as I understand it, that none of these bear a date prior to January 1, 1938, and I would like these marked for identification.

(Marked Exhibit P-20 for Identification.)

MR. ERNST: That leaves, if your Honor please, six protests antedating January 1, 1938, which is the period of deliberation and consideration on the permits. As to these six there are three of them which the Commissioner has pointed out to be as being undated and which may or may not have been written prior to January 1, 1938; is that right, Commissioner?

THE WITNESS: They are undated.

MR. ERNST: They are undated, so they may have been written before or after.

Q. Now I ask the Commissioner whether or not the protest of the Jersey City Real Estate Board is not dated December 30, 1937?

A. It is.

MR. ERNST: I want to mark this for identification.

(Marked Exhibit P-21 for Identification.)

Q. I show you a purported resolution from the president of the Community Center and ask you if that is not dated December 30, 1937?

A. That is right.

MR. ERNST: I would like to have that marked for identification.

(Marked Exhibit P-22 for Identification.)

Q. I show you a letter of American War Veterans of Italian extraction and ask you whether that is not dated December 29, 1937?

A. Yes, sir.

MR. ERNST: I would like that marked for identification.

(Marked P-23 for Identification.)

Q. I ask you, Commissioner, whether it is not a fact that on December 30, 1937 you wrote a letter refusing the permit for the CIO (showing to the witness)?

A. Yes, sir.

Q. And I ask you to let me know what the last date of the last letter which you wrote in respect to the application of the American Civil Liberties Union is?

A. December 22d, I think, from what is here.

Q. All right. Now, Commissioner, that leaves three letters undated out of all the material so far produced under the heading of protests, which are undated, and which might have been received before you rejected these permits, and I ask you to look over the letters and see in what respect any one of them in any specific reference mentions either the CIO or the American Civil Liberties Union in respect to a permit for a street meeting.

A. (The witness indicated a letter.)

MR. HERSHENSTEIN: Do you mind marking that letter denying the permit for the CIO, Mr. Ernst?

MR. ERNST: I am going to introduce it in evidence. I am going to introduce all those in evidence.

MR. HERSHENSTEIN: Now, what is the question?

Q. (Pending question read by the reporter.) Your answer is that one of them does?

A. Yes.

Q. And that is the Hudson County Post Number Two letter?

MR. ERNST: I want to mark that for identification.

(Marked P-24 for Identification.)

MR. ERNST: I would like to also mark for identification the other two undated letters which, like the last exhibit for identification, may have been received before or after January 1, 1938, and which the witness says do not specifically relate to the applications of permits of CIO and the American Civil Liberties Union.

(Marked Exhibit P-25 for Identification.)

MR. ERNST: I would like to offer in evidence now Exhibit P-12, previously offered and marked for identification.

(Received and marked Exhibit P-12.)

MR. ERNST: I would like to offer in evidence Exhibit P-13 for identification.

(Received and marked Exhibit P-13 in evidence.)

MR. HERSHENSTEIN: Is P-13 CIO?

MR. ERNST: P-13 being the correspondence in respect to the application for the CIO and P-12 being correspondence in respect to the ACLU application.

Q. Now, Director, just one more question. I have shown you in batches all of the purported protests. We have broken them down by dates and by reference to meetings. As I understand your testimony there is only one letter dated before December 30th, because the application was refused on the 30th, which specifically relates to CIO or Civil Liberties Union applications for permits by reference to those organizations or permits; is that right?

A. That's right.

MR. ERNST: Now, if your Honor please, I would like to have the Court impound the protests overnight. I understand——

THE COURT: All the records are kept here as soon as they are either offered in evidence or marked for identification.

MR. ERNST: They will be kept in Court, that is all right.

THE COURT: In the clerk's safe.

MR. ERNST: The difficulty is that the documents contain several pages; not each page has been marked for identification and if they are to be out of the court room we ought to mark each page.

THE COURT: They will be kept in the clerk's safe.

MR. HERSHENSTEIN: I shall want to examine them, if your Honor please.

THE COURT: You can examine them here; you cannot take them away.

MR. ERNST: I would like to offer in evidence the telegram and correspondence in respect to application for permit for the Princeton debating society for Senator William E. Borah, consisting of telegram and two letters.

(Received and marked Exhibit P-16.)

THE COURT: We will adjourn now until 10:30.

MR. ERNST: May I make one other offer and I am finished offering in evidence. I would like to offer in evidence material "Pawnbrokers' Descriptive Sheets" marked P-15 for identification.

(Received and marked Exhibit P-15 in evidence.)

(At this point an adjournment was taken to Wednesday, June 8, 1938, at 10:30 A. M.)

Wednesday, June 8, 1938.

Case continued.

Appearances as before.

Also JOHN A. MATTHEWS, Esq., for the defendants.

THE COURT: Are you appearing in this case, Mr. Matthews?

MR. MATTHEWS: Yes, your Honor. The record may indicate that I am associated as counsel in the case.

MR. ERNST: Your Honor, please, I would like to inquire from counsel for the defendants if Mr. Glavin will be in court today.

MR. HAMILL: I am glad you did it and I am all prepared to answer it and say that much as it will shock you for me to destroy this important incident to your publicity move, Judge Glavin is busy in chambers but he will be out here any time you want him and if you want him now, shall I send for him now, and if so he will be out here as fast as improved transportation will take him here.

MR. ERNST: Thank you very much. I will let you know when we want him.

DANIEL CASEY, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. ERNST:

Q. Mr. Casey, in your testimony you mentioned something about a memorandum book. I can show you in your testimony the reference you made to a memorandum book. I just want to make sure that the memorandum book you refer to is in evidence here somewhere as being part of the papers.

A. I referred to memorandum books——

MR. HERSHENSTEIN: Speak up.

A. (Continuing.) —at headquarters. They are not here. I told you that there are several of them. I couldn't tell you just how many.

Q. What do they contain, just generally?

A. They contain the orders from headquarters to the precinct, allowing meetings on different corners.

Q. They have nothing to do with——

A. With my office, no.

Q. They have nothing to do with the basic allowance or disallowance of a permit?

A. No, they haven't.

Q. And these are merely records that follow after you have allowed the meeting?

A. Yes.

Q. Mr. Hershenstein has handed me seven additional documents, being the additional protests which were sent for yesterday. Have you examined these?

A. No, I haven't.

Q. I would like you to look them over and tell me if any one of them has a date that precedes January 1, 1938. There is one more here (handing to the witness).

A. No.

Q. Now, Commissioner, will you look through and see if any one of these protests is a protest against the granting of a permit for a CIO or a Civil Liberties Union meeting.

A. Here is two of them.

Q. Now, of the seven, Commissioner, I understand that five, all of them dated after January 1, 1938,—not a one relates to a specific suggestion or request to you to not allow a permit for speaking by the CIO or American Civil Liberties Union.

A. That's right.

MR. ERNST: I want these marked for identification, five instruments.

(Marked Exhibit P-26 for identification.)

A. Here is two, Counselor.

Q. Now, Commissioner, I understand there are two left where you indicate that you think that those two refer to the CIO and the Civil Liberties Union.

A. CIO.

Q. CIO, both of them?

A. No, not both of them, just CIO.

Q. No, but both of the documents?

A. CIO.

Q. Now, the one here that has a resolution signed by Robert Lynch refers to CIO in that Jerry O'Connell is said to be a leader of the CIO, is that right?

A. Yes.

Q. Did you check up to see whether Jerry O'Connell had any connection whatsoever with the CIO?

A. I did not.

Q. You did not. So that just on the face of this you would say that this instrument relates to the CIO because the writer said that Jerry O'Connell was a leader of it?

A. Well, that's what it states.

Q. In any event you did not have this in your possession before you rejected the application of the CIO? You recall that was rejected in December.

A. No, I didn't.

MR. ERNST: I want to mark this letter for identification.

(Marked Exhibit P-27 for identification.)

Q. The other letter, Commissioner, is dated May 21st and is signed "A citizen" and it relates to John L. Lewis, is that right?

A. Right.

Q. It has no reference, however, to denial of a speaking permit for John L. Lewis?

A. No.

Q. Is that right?

A. No.

Q. That is not right?

A. No, it doesn't, I say.

Q. It doesn't; that's right.

MR. ERNST: I want to mark this letter for identification.

(Marked Exhibit P-28 for identification.)

Q. I understand that this covers all of the letters and resolutions of protest which you had in your files or available to you?

A. Right.

Q. Did you have letters coming from the public generally disapproving your action in respect to your application for permits or otherwise?

A. No, sir, not to my knowledge that I can remember offhand.

Q. Offhand you would say you never got a single letter——

A. I haven't seen any.

Q. What?

A. I haven't seen any.

Q. You haven't seen any. Do you recall seeing a letter addressed by twenty-six United States Congressmen?

A. To me?

Q. Addressed to you or Frank Hague.

A. I am talking about myself, I haven't received it.

Q. Commissioner, you know that most of the protests that you have examined were addressed to Frank Hague and not to you?

A. Some of them were.

Q. Quite a number of them.

A. They get mixed up, I think, by coming out here.

Q. What do you mean, they got mixed up?

A. Well, I think the orders were to bring them out from the Mayor's office and my office.

Q. Oh, I see.

THE COURT: Are there some additional ones here, Mr. Hamill? Are there some additional protests here, do you know?

MR. ERNST: They are all in evidence, your Honor.

THE COURT: They are——

THE WITNESS: They should have been here this morning, from what I understand, your Honor.

THE COURT: That is what I meant.

MR. HAMILL: There are other protests to come here, your Honor. Those are the ones Mr. Hershenstein talked about yesterday. I don't know whether they are here now or not.

THE COURT: As we used to say in the artillery, they are on their way, is that right?

MR. HAMILL: Yes.

MR. ERNST: Well, may I find out from Mr. Hershenstein, is this all or will there be some more?

MR. HERSHENSTEIN: I have, if your Honor please, or there will be here this morning, thousands of letters which I referred to yesterday which the Mayor has received commending his position.

THE COURT: I am right then in saying they are on the way.

MR. HERSHENSTEIN: They are here.

MR. ERNST: They are here?

MR. HERSHENSTEIN: I mean they will be here.

MR. ERNST: Today?

MR. HERSHENSTEIN: Oh, yes.

Q. But the ones that you have been examined about, Commissioner, are the only ones that came to your office?

A. Yes, sir.

Q. And as far as you know you received no communications condemning your position in relation to the denial of permits, none at all?

A. No, sir, not to the best of my recollection.

Q. Who in your office would receive those in the first instance it they had come in?

A. My secretary would receive them and would open the letters and lay them on my desk.

Q. Now, have you ever allowed a single meeting since you have held your present position where you have received a single written protest?

A. I don't remember of any.

Q. If I show you a list of the meetings for which permits have been granted will that help you?

A. It might.

Q. I show you Exhibits P-10 and P-11 which you testified was the all-inclusive list of permits granted and I ask you again whether in any single case where a permit has been granted had you received a letter of protest.

MR. HERSHENSTEIN: Of course, you know, Mr. Ernst, that the vast majority of these permits were granted before Director Casey became Commissioner.

MR. ERNST: I asked him during his term of office; you didn't get it.

A. Not to my knowledge.

Q. Now, do I understand you to testify that you did not investigate the protests, in other words, to find out whether the signatures were genuine or duplicated or doctored.

A. I didn't investigate it, no, sir. I took it on its face value.

Q. And you relied to a considerable extent or to some extent on the protests to form your judgment that there would be a disturbance or a riot?

A. Right.

Q. Now, would you have modified your judgment, if, in a so-called protest containing hundreds of alleged signa-

tures of real people, you had known that the same signature appeared more than once in the same protest, would that have changed your judgment about the validity?

A. No, it wouldn't, no, sir.

Q. Wouldn't have had any effect. Now, if I show you, for example, here that F. or S. Walter Brannagan—does anybody know what is his first initial, F or S?

A. Who is it?

Q. S. Walter Brannagan.

THE COURT: Is he a signer?

MR. ERNST: He is a member of the Legislature or was.

Q. If I show you a name with some initial I can't make out, Walter Brannagan, 146 Clark Street, three times in the same protest, and if you had known that that name repeated itself three times in the one protest, would you not have given less weight to the whole protest or would it have made any difference to you?

THE COURT: Is the handwriting the same?

MR. HAMILL: I object to that. The question——

Q. I will leave it to the witness.

MR. HAMILL:——ought to be "Would you have considered that fact that it appeared three times?" If what counsel says is so would you have considered it?"

THE COURT: Yes. Is the handwriting the same?

MR. ERNST: Repeat my question, please.

MR. HAMILL: I object to the question.

THE COURT: Amend it to say "Would you have given weight to it?"

(Question repeated by the reporter.)

THE COURT: I just struck out the "less."

MR. ERNST: I will change the question as the court suggests and ask the Commissioner——

Q. Are those three signatures the same as far as you can see?

THE COURT: Do they seem to be in the same handwriting, Mr. Casey?

MR HAMILL: Why not hand them to the Court since the Court is passing on the fact? I mean what good will it do for the witness to say unless he is handwriting expert?

THE WITNESS: Here is one of them (indicating).

MR. ERNST: If your Honor please it seems to me that it makes no difference whether they are in the same handwriting. They purport to identify the same person, and even if written in different handwritings the most that could he said is that the Commissioner should have been doubly suspicious because then there might have been a forgery in addition.

MR. HAMILL: That's your conclusion. Why should he be doubly suspicious? The man himself might have signed it deliberately three times——

THE COURT: It looks as if he had signed it three times.

MR. HAMILL: What harm would that have been?

A. Yes, he signed it three times.

Q. He did.

A. It looks like his signature to me. I am not a handwriting expert.

Q. Now if you had known that fact at the time you were considering this protest for any purpose whatsoever would you have given some weight to that fact that the signature appeared three times?

A. Well, there is different ways you can look at it. Whoever handed the petition—there might have been se-

eral with petitions, and he was asked by several people to sign it; like any other man; and they are all put into the one petition and sent in.

Q. Yes.

A. They are not on the same sheet.

Q. That is right. Now there is no caption on each sheet telling what people are signing, is there?

A. There is not, no.

Q. So that the sheets no doubt were handed around separately for signature?

A. Well, that's the way I think it was. That's my opinion. I might be wrong.

Q. That's right. Now, as a matter of fact,——

Mr. Hamill: I think the opinion of counsel and the witness's ought both to be stricken out. Neither one of them knows what was done.

Mr. Ernst: I will ask him.

Q. Don't you know as a matter of fact that the police of Jersey City took these papers around?

A. The police?

Q. The police.

A. That is a ridiculous question.

Q. Do you——

A. Ridiculous. I know it is emphatically no. That's my answer.

Q. That's your answer.

A. Not with my sanction or anybody connected with the police department.

Q. Oh, now. Let's get this answer straight. I didn't ask you about sanction. I just wanted——

Mr. Hershenstein: Well, he said no, and in addition he said it wasn't with the sanction——

Mr. Ernst: I just want to make clear that it has an addition, yes, sir.

Q. I take it you mean that you don't know that the police did it, and in any event, if they did it it was not with your sanction?

A. Well, that is right.

MR. HAMILL: No, he means more. He means that the police absolutely did not do it. That's what he said. And if they had done it, it would have been done without his sanction.

MR. ERNST: No, he can't testify they didn't. All he can testify to is that he doesn't know about it. He can't testify that they didn't do it.

MR. HERSHENSTEIN: He has testified that is wasn't done with his sanction.

MR. ERNST: That's right.

Q. Let me ask you again: if you had seen this instrument and really investigated it and found one name three times,——

MR. HAMILL: Now, excuse me a minute. I move that that be stricken out unless counsel will prove that the police did do it.

MR. ERNST: I am not going to talk about police any more.

MR. HAMILL: Then I move that that be stricken out.

MR. ERNST: You don't know what the question is going to be.

MR. HAMILL: I am talking about the question that is in, about the police distributing these; unless you are prepared to prove that they did that, it should not be in the record.

MR. ERNST: We intend, your Honor, to prove through other witnesses, the methods by which these

instruments and others were distributed to the police and other officeholders. I imagine that Mr. Casey knew about it, and would so testify.

MR. HAMILL: And you are going to prove all that?

MR. ERNST: We intend to produce their testimony at the proper time.

THE COURT: As the record now stands, the Commissioner says that that was not done.

THE WITNESS: Not done with my sanction; I never knew anything about it.

Q. Now, as to the question where I was interrupted, I ask you that if you in examining this document for any purpose within your province had come across in your examination the fact that at least one signature was there three times, would you not in the pursuit of what you call good common sense, have examined the entire document further to see how many other names are duplicated?

A. I just looked over it roughly. It was like every other protest that comes in. I didn't go through it with a fine tooth comb.

Q. I know that you didn't but if——

A. I just looked at it the same as anybody else would, and filed it away.

Q. That is right. And if in looking it over roughly, somebody had found out that some signatures were duplicated, you would have looked for other duplications, wouldn't you?

A. I didn't even look for any duplications.

Q. So it wouldn't have made any difference to you if there had been dozens of duplications?

A. Not in the least.

Q. That is right. And the fact that there was no caption at the top of each page made no difference to you?

A. No difference to me at all.

Q. Commissioner, it is a crime in Jersey City to disturb a public meeting, isn't it?

(No answer.)

Q. To break up a public meeting, to create a disturbance at a public meeting?

MR. HAMILL: I object to that. It is a legal question. It is disorderly conduct, to begin with.

MR. ERNST: That's enough.

MR. HAMILL: If that is what you mean.

MR. ERNST: That's what I mean.

Q. Commissioner, it is disorderly conduct?

A. Right.

Q. Right? Do you know——

MR. HAMILL: To break up a meeting anywhere in this country, so far as I know.

Q. Do you know if there has been brought to your attention through your Chief of Police, a single instance of an arrest during the past year of any person for creating a disturbance at a public meeting?

A. No, there has not.

Q. Did you issue any permits for the gatherings in Journal Square at the time that Norman Thomas was to speak there, and Jerry O'Connell was to speak there? Those are two different dates.

A. I granted no permit, no, sir.

Q. There was a large public assemblage in Journal Square.

A. I granted——

Q. What?

A. I granted a permit, I think, for a parade of the veterans. I don't know whether it was for the Thomas or the O'Connell.

Q. Meeting.

A. Meeting.

Q. But as to the assemblages in Journal Square you granted no permits?

A. I did not.

Q. And those assemblages, take them either one you want first, included, would you say, hundreds of people or thousands?

A. There was thousands there.

Q. Were you there in each case?

A. I was there at the O'Connell—O'Connell didn't come over that night.

Q. But you were there at the assemblage?

A. I was there that night.

Q. And there was a large assemblage there without a permit?

A. There was. The veterans, as I said, had a permit to come there to parade right there.

Q. In one case?

A. That's right.

Q. Now, as to the Pershing Square or Pershing Park, whatever it is, meeting there was a permit granted for that gathering?

A. There was not.

Q. There was no permit granted for a parade either?

A. No, sir.

Q. And there were no arrests made for having a meeting without a permit?

A. There was not.

Q. There was no protest made by you or your chief of police for unlawful assemblage or for gathering without a permit?

A. A park is a public place, anybody can go in there.

Q. And so everybody can go into the park and the only time a permit is needed is if a man starts to speak?

A. That's it.

Q. So that if everybody goes to the park without a speaker you have no power to stop the assemblage?

A. I have not.

Q. It may be that if there were a gathering of people in a park there might nevertheless be disorder?

A. There might.

Q. And disturbance. But you would have no right to stop it in advance of the disturbance as you would in case there were a speaker?

A. Well, now, that is a very funny question, Counselor. The park is policed at all times; there is always, I think, a man assigned to Pershing Field. There is crowds there, baseball games and everything else going on there. There is liable to be a little trouble there the same as any place else. That is squashed.

Q. That's right. But if a thousand people meet there and nobody gets up to make a speech you have no power as to issuing a permit for the gathering or not?

A. I have not, no.

Q. And there might be disorder arise out of such gatherings even without a speaker?

A. Well, there is liable to be disorders happen anywhere.

Q. Yes.

A. You or I might get together and there might be disorder.

Q. So the CIO could get together and not ask for a permit if thousands of its members should gather at Pershing Field without a speaker?

MR. HAMILL: I object to that. They might announce it in the press. They certainly wouldn't ask anybody's permission to do that if that is what you mean.

MR. ERNST: I am just asking whether——

(Question repeated by the reporter.)

MR. HAMILL: Make an announcement—they could make that announcement.

THE COURT: You mean under the ordinance?

MR. ERNST: Let me rephrase it to suit Mr. Hamill.

THE COURT: Yes.

Q. If the CIO announced in the press and through the distribution of circulars on the streets of Jersey City that all of its members in Jersey City should meet at Pershing Field and if as a result twenty thousand or thirty thousand CIO members in Jersey City met in Pershing Field, and if in addition there was no speaker, either announced or attempted to make a speech at Pershing Field, you would be powerless in respect to issuing or denying a permit for such meeting?

MR. HAMILL: I object, that is a legal conclusion.

Q. Let the witness answer.

A. That is a very technical question.

Q. That's right, a technical question.

A. In a case of that kind I would consult the law department on it and see what my rights are.

MR. HAMILL: I wonder if there is anyone in the court room who can answer that. I object to the question; it is a technical question.

MR. ERNST: Your Honor please, I want to show the absurdity of the Jersey City, Frank Hague, position in that, if twenty thousand people gathered with no speaker they are going to be forced to the conclusion that that gathering can take place.

MR. HAMILL: Well, here——

MR. ERNST: May I finish?

MR. HAMILL: Excuse me, sir.

MR. ERNST: Even though twenty thousand people might congregate, according to what the Commissioner calls his good common sense, a greater danger of disturbance might exist than if a little debating society

from Princeton invited Borah to speak somewhere else in town, but it would be powerless to prevent the meeting in advance, they would have to wait until an outbreak.

THE COURT: Does the ordiance say——

MR. HAMILL: The ordinance says "No public parades or public assembly." Of course, he would have a right to do it. Your Honor will construe that ordinance for us. You construe it for us (to Mr. Ernst).

MR. ERNST: Is that your position?

MR. HAMILL: It says "No public assembly." Is it your contention——

MR. ERNST: Let's understand each other. Give me your statement.

MR. HAMILL: I am going to give you my statement.

MR. ERNST: I am satisfied with it as it is.

MR. HAMILL: Thanks. You don't know what it is yet. Is it your contention that a mob can gather—or let me withdraw the word "mob"—that there can be a congregation of people bent on promoting violence and then, of course, constituting a mob, and that although the Director of Public Safety knows this in advance he cannot stop it?

MR. ERNST: I have not mentioned violence, I am making no contention, your Honor; I am conducting an inquiry of a witness. The witness has testified that if thousands of people assemble——

MR. HAMILL: You are not answering me.

MR. ERNST: —as they did assemble on three occasions, they require no permit, he has so said; on two occasions he was there—on one occasion we have to draw a little parenthesis because he gave a permit for the parade, but on two occasions thousands of people

assembled. Now, I just want to examine the witness as the law enforcement agent as to whether or not that is a public assemblage under the Act and whether if twenty thousand CIO people came out to another part of town that would not be a public assemblage under the Act and wherein lies his power of discrimination.

MR. HAMILL: I object.

MR. ERNST: Perfectly clear field of inquiry.

THE COURT: It must be a public assembly.

MR. HAMILL: Suppose they gather at a ballgame, that is a public assembly.

MR. ERNST: I didn't ask a ballgame.

MR. HAMILL: Suppose they gather to see an open air play; that is a public assembly. Of course, you have no right to stop a meeting of that kind.

THE COURT: What does the ordinance say exactly again?

MR. ERNST: The ordinance, your Honor please, says "From and after the passage of this ordinance no public parades or public assembly in or upon the public streets, highways, public parks or public buildings of Jersey City shall take place or be conducted until a permit shall be obtained from the Director of Public Safety." This witness has testified that to his knowledge there were two large assemblages, both of which he attended, or at least one of which he attended, so he knows of his own knowledge. He testified there was no permit. Now, I am asking him——

THE WITNESS: I will clarify that for you.

MR. HAMILL: Wait a minute.

MR. ERNST: I would like the witness to clarify it.

THE COURT: Go ahead.

MR. HAMILL: Now, here is what I want to say: Is it your contention that this ordinance covers, for instance, an audience or gathering who are gong to the movies?

MR. ERNST: I have no contention, Mr. Hamill; I have got a reluctant adversary witness on the stand who does not require any protection, and I think if you will allow Mr. Casey to do so he can handle himself, he is willing to answer the question. My questions may not be always clear to him but he has always come around and gotten what is in my mind and has answered frankly and honestly. I have no contention at all.

MR. HAMILL: That remark should not be let pass without a repudiation. The witness has answered every question put to him. Your Honor knows that what are now being posed to the witness are questions of a highly technical nature. One of them was to me so technical that I wondered if any lawyer in the court room could answer it, including the interrogator, and the witness is not reluctant or he is not recalcitrant or he is not stubborn and he is concealing nothing and he is answering legal questions as best he can, although legal questions should not be put to him.

THE COURT: I think the witness seems a little more anxious to answer the questions than his counsel does to have him.

MR. HAMILL: I think so too. If I were in this place I wouldn't answer them.

MR. ERNST: If I may cut it short, your Honor.

Q. Commissioner, did you see an advertisement appearing in the Jersey *Observer*, a full page ad, Saturday, May 7, 1938?

A. (No answer.)

Q. You can see the ad.

A. I can see the ad. I might have seen it.

Q. Yes.

A. I might have paid no attention to it. I couldn't say if I did or didn't.

Q. All right. Now you know, as a matter of fact, that there was a large assemblage in Journal Square the evening of May 7, 1938?

A. There was.

Q. There was. Now there was no permit issued for that assemblage?

A. There was a permit denied for a speaker that was going to go there, and that was a protest, people going there to protest him speaking.

Q. Now you say there was a protest——

A. Which they have got a perfect right to do. They are citizens of the city.

Q. That is right.

A. They can go any place they like.

Q. Now this ad calls for, and I am quoting at the corner, you can read it with me, "Friends of organized labor assemble with us tonight at Journal Square at seven thirty P. M."

Is that right?

A. That is right.

Q. So that there was a large gathering and assemblage in Journal Square that night?

A. There was.

Q. As a result in part of this call?

A. As a result, I would say, of a prominent speaker going to be there that they objected to.

Q. And you issued no permit, I take it, for that assemblage.

A. I did not.

Q. In part because people of Jersey City have a right to assemble to protest?

A. They have.

Q. Now have they got a right to protest against Norman Thomas? They have, haven't they?

A. They have got a right to protest against anybody that they don't want in the city, for the welfare of the city.

Q. Have they a right——

A. For the welfare of the citizens of the city.

Q. That's right. And have the people a right to assemble at Journal Square to protest against Frank Hague?

A. They have got a right to protest against anybody they feel like, anybody that is going to talk, no matter who it is.

Q. I didn't ask you whether they have a right to protest I asked you whether they have a right to assemble to protest against Frank Hague?

MR. HAMILL: I object. I object. It is puerile and ridiculous. Have the people of America a right to protest against any of its citizens? Now, I don't know: it is news to every American that they can. But counsel seems to want light on that matter.

MR. ERNST: I need it.

MR. HAMILL: Well, that's deplorable.

MR. ERNST: I need it very badly in this situation. I am faced, your Honor, with——

THE COURT: I think the witness said that they had a right.

MR. ERNST: Had a right to protest.

THE WITNESS: A person has the right to protest if they want to.

Q. Now have they the right to assemble to protest against Frank Hague in Journal Square without getting a permit, under the ordinance?

A. If Frank Hague is going to speak there and has a permit, if you will explain it in my way——

Q. That's right. I want you to explain it.

A. And there is a meeting of the veterans where they are going there and going to protest against Frank Hague

talking or anybody else, it is my duty as head of the police department to protect Frank Hague, and if I think violence is to be committed there, to get Frank Hague out of there and protect him to the best of my ability and the best of the ability of the police department.

Q. Now, Commissioner, I didn't ask a single thing about getting people out.

A. Well, I am just telling you what my duty is.

Q. That's right, but I didn't ask about it and I am not concerned any more.

A. I think you ought to let me tell it.

Q. Yes.

A. How I should handle it.

Q. No, your counsel can ask you that.

A. That's all right. I think I can answer it.

Q. But listen, Casey, I am asking something very different. I am asking about whether if Frank Hague is going to speak in Journal Square, for example, have the CIO workers the right to go to the meeting to protest?

A. They can go there and protest, certainly. Why not?

Q. Have they a right?

A. They have done it. They have been doing it.

Q. If it were announced that Frank Hague were to speak there, have the CIO workers the right to advertise to their members and the public to come to Journal Square to protest, and to assemble there——

MR. HAMILL: I object.

MR. ERNST: Let me finish my sentence. At least courtesy ought to apply over here.

MR. HAMILL: I know, providing there isn't too much prolixity.

Q. (Continuing.) —without asking you for a permit?

MR. HAMILL: I object. Have they a right to advertise? Do you mean in the newspapers?

MR. ERNST: You can ask him on cross-examination.

MR. HAMILL: I object to the question, have they a right to advertise. That's a matter the newspapers have to answer. He can't answer that.

THE COURT: There is nothing in the ordinance forbidding it, that is the fact, isn't it?

MR. HAMILL: No, there is nothing in the ordinance forbidding advertising that I know of.

MR. ERNST: He can say that they have a right.

MR. HAMILL: Well, if it is a legal question, can't we all say it?

MR. ERNST: This is the enforcement officer under an ordinance. He says he uses common sense. I want to know what his decision is on common sense. He says he doesn't consult counsel.

MR. HAMILL: Well, he couudn't use his common sense on something beyond his control, even if he wanted it.

MR. ERNST: No, I would like——

MR. HAMILL: It is up to the newspapers to say whether they will carry an advertisement or not, and all the common or uncommon sense in the world wouldn't help him to allow it to go in or keep it out.

MR. ERNST: I didn't ask you whether the newspapers would run the ad. I would like my question read, your Honor.

THE COURT: Yes, read it.

(Pending question read.)

A. Advertising, I got nothing to do with it. I am not interested in advertising.

Q. What is the answer?

A. I am not interested in advertising. It is a technical question, and it is not a question that I can answer, how

they advertise or what they do. That has got nothing to do with me, as head of the police department.

Q. That is a satisfactory answer. I take it that you as the head of the police department would have no power to prevent their putting in an ad?

A. I couldn't stop them from doing it.

Q. That's right. Now, how about the other part of the question, the right for assembly. Read the question again and only answer it, Mr. Witness, if you please, in respect to the assemblage.

Q. (Question reread by the reporter.)

A. They got a right to do it without asking me for a permit, to go there to protest.

Q. Now have they the right to assemble for the purpose of a protest without asking for a permit?

A. Well, there must be a reason for them going there. I would have to know what it is and all about it before I would consider it and what it is.

Q. In other words, if they give a reason, which in your common sense judgment, or whatever the phrase was you used, satisfies you, you would allow them to assemble, is that right?

A. Well, I—that's something that I couldn't give a definite answer on. As I told you yesterday, when that case presents itself to me and I know the facts, I act accordingly, and I will act accordingly.

Q. In connection with the facts of the assemblage on May 7th, to protest, you did not issue a permit?

A. I did not.

Q. You knew the facts, is that right?

A. That's right.

Q. And you did not think that a permit was needed for that assemblage?

A. I did not.

Q. It isn't that you granted the permit?

A. I didn't grant the permit.

Q. You just didn't think a permit was needed?

A. I refused a permit to the speaker that was there. Naturally crowds went there to protest.

Q. Now, would people——

A. Journal Square being a public place, they had a perfect right to go there, the citizens of the city.

Q. That's right. Now there is no separate park or space set aside for meetings, generally, is there?

A. There is not.

Q. Like Hyde Park or Union Square or Columbus Circle?

A. There is not.

Q. Nothing like that. Now the reason why, as I understand you, you permitted the assemblage on the night of May 7th in Journal Square was because the assemblage was being conducted in order to protest against a speaker?

A. That is it.

Q. Now, would you say that the assemblage could also have been conducted without a permit if it were to have a protest, even though there were to be no speaker?

A. I wouldn't allow it.

Q. You wouldn't allow it. In other words, a large number of people may gather to protest against a speaker in Journal Square, but may not gather without a permit if they are not to protest against a speaker, is that right?

A. Traffic regulations would prohibit any time without notifying anybody about anybody going there. By the way, you are putting that question to me, any time that anybody would feel like going and going up to Journal Square or any other street in the city, without paying any attention to laws or ordinances, have a meeting there, draw a crowd, I should allow that. That's the way that I construe the question that you put to me.

Q. Let me try it again.

A. I might be wrong.

Q. No, you misconstrued my question, Commissioner. Let me try it again and see if we agree.

Q. Do you agree that on May 7th you knew there would be a vast assemblage of people in Journal Square to pro-

test against the speakers who had applied for a permit, is that right?

A. (No answer.)

Q. You looked into the matter and you found that that assemblage was entirely lawful without a permit?

A. I did.

Q. Now I ask you, would the same thousands of people be permitted to come there to a meeting for protest, even if there had been no proposed speaker on May 7th?

A. I wouldn't allow it because they had nothing to protest against.

Q. Now, what if they had gone there as a demonstration protest against Frank Hague and Commissioner Casey? You wouldn't allow it?

A. If there was no speakers going to be there, no.

Q. I take it from your other testimony that the only reason on which you disallow assemblages is fear of riot and disorder?

A. That is it.

Q. Now I take it that you now say there is greater danger of disorder if there is to be no speaker on the particular occasion against whom they are protesting?

A. I say——

Q. Than if they assembled on an occasion when there was no speaker, isn't that the position you are now in?

A. I say where an organization, all members that are going there or any place else, you very seldom have any bother with them. It is where the papers of the city and the papers of the state and country talk about a prominent —well, they publish about a prominent speaker going to appear at a certain street in a certain city and the people in that city object to that speaker, don't want him to talk there, it is my duty as head of the police department not to allow that person to speak where it will cause riot, bloodshed and murder, maybe.

Q. Now, Commissioner——

A. Without he having a permit.

Q. Now, Commissioner——

A. And as far as gatherings, they have parades, crowds there, different organizations, different organizations have meetings in different places. There is never any bother. And a case of that kind, it is up to me as the head of the police department to decide whether I will allow that gathering or not.

Q. Now, Commissioner, let me get back to my question. Let me try once more. I think it is simple and if you will just be patient and listen I think you will get the point I want.

I understand that you say that if there is a possibility of a speaker in Journal Square, thousands of people may gather in Journal Square to protest against the speaker, and that you, on May 7th, came to the conclusion that there was no danger of a disturbance because of the gathering of thousands in a protest, and that you must preserve the right of the people to protest against a speaker?

A. Yes.

Q. Is that right?

A. Right.

Q. Now, all I want to know is, may those same thousands of people also assemble at Jersey City at the same place as the first thousands, to protest against Frank Hague, even though there is to be no speaker, and you say no, is that right?

A. I say no.

Q. All right. Now I ask you, number three, isn't the distinction in your mind between those two cases due to the fact that in the first case, where people come to protest against a speaker, that there is no danger of disturbance or violence and riot, but if they go there in thousands to assemble, to protest against a Mayor, or any other human being, without a speaker, there is a danger of violence? Isn't that the only case in which you could make the distinction under the statute, under the ordinance?

MR. HAMILL: I didn't catch those last words.

MR. ERNST: Isn't that the only basis on which you can operate under the ordinance? Isn't that it only direction?

MR. HAMILL: I object to that, I object to that. I will let counsel himself answer that question. This isn't fair to put a lay witness on the stand and address legal questions to him. Now, I would like the Court to listen again, as it did before, to that question and to pass on it.

THE COURT: I heard it. Would it be fair to ask you, Mr. Hamill, whether Commissioner Casey has been given the benefit of some written instructions from your law department as to the interpretation of what I agree with you is a rather difficult ordinance to interpret?

MR. HAMILL: That I don't know, for this reason——

MR. ERNST: I asked the witness; he said no.

MR. HAMILL: Let me answer the Court's question.

THE COURT: I agree it would be very hard for a layman to answer.

THE WITNESS: I did say that it is a technical question.

MR. HAMILL: I say I don't know whether there are written opinions or not for this reason, that first of all the opinions may have been oral; secondly, the opinions were not only given by the corporation counsel, they can be given by at least four men or five in the law department, so that I want to be understood as not evading the Court's question, but as answering it squarely and telling what I know.

THE COURT: I mean this ordinance uses rather vague words.

MR. HAMILL: Sir?

THE COURT: This ordinance uses rather vague words. Maybe that is necessary, but still a layman, I

should think, would be rather puzzled, or even as you said a minute ago, a lawyer.

MR. HAMILL: A lawyer would be puzzled to answer the questions being put.

THE COURT: But a layman would have to have some guidance, I should think.

MR. HAMILL: They are questions which never arose in actual performance of duty, these hypothetical questions, nor are they in issue. They would be questions to test the legal ability of an expert, not questions to put to a director of public safety.

THE COURT: Can I have that last question repeated?

MR. ERNST: I can reframe it, your Honor.

Q. You have testified that thousands of people may go to Journal Square and assemble there in order to protest against a man who is announced as a speaker?

MR. HAMILL: I don't know that he said that; I don't think——

Q. Didn't you say that, Mr. Casey?
A. Yes, I did say it.

MR. HAMILL: I am not sure that anyone has the right to go there and protest.

MR. ERNST: Casey and I understand each other. He said it and there is no question about it.

MR. HAMILL: I know, but your understanding doesn't satisfy me.

MR. ERNST: Mr. Casey says he said it.

MR. HAMILL: I know, "Will you walk into my parlor said the spider to the fly." Your understanding him is not for the benefit of Casey.

Q. Mr. Casey, is that your understanding of the position, that people can assemble in Journal Square as they did on the night of May 7?

A. They can, yes.

Q. In order to protest and they don't need a permit?

A. That's the way I look at it, that is my opinion. I might be wrong.

Q. That's right. Now, then, I understand you to say they could not assemble without a permit in Journal Square for the purpose of a protest where there was no proposed speaker, is that right?

MR. HERSHENSTEIN: Isn't that the same question just put in another way?

MR. ERNST: Not at all. The distinction is—let me get it across, and that is just the trouble, that you have never understood it and neither has Mr. Hamill.

(Question repeated by the reporter.)

A. That's right.

Q. Now, I ask you, Commissioner, the basis of your denying an assemblage permit is the danger of violence?

A. That's right.

Q. Now, I ask you do not these series of questions mean that in administering the ordinance, a difficult ordinance, you have come to the conclusion that people may not assemble to protest if there is to be no speaker but they may assemble to protest if there is to be a speaker?

MR. HAMILL: Could I hear that read again?

(Question repeated by the reporter.)

MR. HAMILL: I object, it is a legal question. This man decides in each particular instance, he doesn't come to any set conclusion. He decides in each particular instance wehther there shall be a riot, disorder, disturbance or disorderly assemblage.

MR. ERNST: He has testified, your Honor, already in administering the department that under certain circumstances they can assemble.

THE COURT: I suppose we would have to assume and I suppose you are assuming, Mr. Ernst, a prearranged assemblage.

MR. ERNST: In both cases.

THE COURT: I mean an assemblage which was called for by invitation.

MR. ERNST: In both cases. And that is why I got in the words "advertisement and announcement."

MR. HAMILL: He has——

MR. ERNST: The Commissioner can answer the question.

A. I will answer that.

MR. ERNST: Why, of course.

MR. HAMILL: Wait a minute, don't answer it, just yet until I make an objection. Of course, the ordinance only permits anybody to stop a public assemblage on account of riot, disturbance or disorderly assemblage, whatever the wording of the ordinance is. There isn't any right vested in anybody to stop a public assembly anywhere in this country. Now, he himself said that the only reason you could stop it would be for some cause such as the traffic laws. For instance, we have under the Constitution the right of public assemblage, but would anybody at this moment permit five thousand people to gather at 42d Street and Broadway merely if it were to gather? That would be violating the traffic laws.

THE COURT: The traffic is out.

MR. HAMILL: I mean as an abstract proposition, we have it. But the question is as to how to apply this in

particular cases. All of these questions are technical and legal. Now, before I end may I say this: Do you think your Honor will be very much helped in deciding this case by the legal opinion of the Director of Public Safety? Not if I know this Court.

MR. ERNST: I didn't ask his——

MR. HAMILL: And I do.

MR. ERNST: —his legal opinion.

MR. HAMILL: That is what you are asking.

MR. ERNST: I had asked the witness originally but he called on counsel for advice and he said no. I got the counsel on the stand to find out whether he advised Casey and the point of privilege was raised. Then I go on with Mr. Casey and I have no trouble with him, saying "What is your administration position?" and he said "Administratively I allow these assemblages and not these", and the distinction is whether there is a protest against the speaker or not. Now I ask him—and I want this answer——

Q.—whether or not administratively you have taken the position that an assemblage to protest against a speaker has no danger of violence and disturbance and therefore is allowed without permit, as it was on these occasions, but as you have testified, an assemblage announced and called of the same people in the same place, but with no speaker announced, would be unlawful without a permit?

MR. HAMILL: Wait a minute. Have you finished with your question?

MR. ERNST: The witness understands me thoroughly.

MR. HAMILL: All right, so do I, and I object for that reason. It is a hypothetical question and this is a fact witness and unless he shows him the testimony that

such an incident occurred as he brings to the attention of the witness he cannot get an answer.

THE COURT: I thought there was such an incident, wasn't there, in the testimony?

MR. ERNST: I offer in evidence a page from the Jersey *Observer* of May 7, 1938, with particular reference to the advertisement on page 4 and with particular reference to the printing on the bottom "Friends of Organized Labor assemble with us tonight at Journal Square at 7:30 P. M." and I want the record to note that this is the instrument to which the testimony has been referring and which the witness examined in respect to his previous answers.

MR. HERSHENSTEIN: And which the witness says he doesn't even know whether he ever saw it.

MR. ERNST: That's right.

MR. HAMILL: Well, now, you are not going to——

MR. ERNST: I offer it in evidence.

MR. HAMILL: You cannot offer it in evidence except as a part of the testimony of this witness and this witness said "I never saw it."

MR. ERNST: I offer it for identification. Let us get on with the trial.

MR. HAMILL: All right, now you are getting legal.

(Marked Exhibit P-29 for Identification.)

MR. ERNST: Now, your Honor, we have before the Court a specific instance identified, not only by the ad for whatever value it has as to the publicity of the meeting, but we have the Commissioner's own statement that he knows about the meeting. It was a large meeting, there was not permit required, and he has stated fully the reasons why there was no permit needed. We are

attacking the discriminatory use of an illegal ordinance. We must go forward with our examination on the lines I have indicated.

THE COURT: This meeting, Commissioner, did they ask for a permit. You may have answered it.

THE WITNESS: They asked for a permit for that meeting I think of May 7th, I think it was O'Connell or Thomas, I can't tell you offhand.

THE COURT: No, this one here, or is it the same meeting?

THE WITNESS: They all refer to the same meeting. That was a protest meeting.

MR. ERNST: It was the same night, your Honor, as the O'Connell permit was denied and here is an announcement of an assemblage.

THE COURT: Did these undersigned people, did they ask for a permit?

THE WITNESS: They did not.

THE COURT: I don't know that anything is added to it by the Commissioner's opinion but certainly this meeting seems to come within the ordinance.

MR. HAMILL: I didn't see that ad at all.

THE COURT: In my humble legal view.

MR. HAMILL: I mean if I saw it in the press I don't recall it.

THE COURT: Your question, as I understood it, Mr. Ernst, was if they had asked for a permit what would his view have been.

MR. ERNST: No, your Honor, if you will bear with me a moment, maybe it is my fault for lack of clarity, but we start—and this is really an important element

in the entire case—we start with an ordinance which says that in order to have an assemblage you must get a permit. A group in the community or an individual ask for a permit to speak, denied; another group in the community announce that they want to assemble at the same place to protect against a speaker if he shows up.

THE COURT: Well, I don't think, if you will allow me to interrupt——

MR. ERNST: The Commissioner has said—just bear with me a moment, your Honor—the Commissioner has said that an assemblage for the purpose of protesting against a proposed speaker requires no permit under the ordinance and that he knows that the assemblage was large and took place.

THE COURT: No, I don't think you meant that they didn't require a permit, Mr. Casey.

THE WITNESS: No. What I—he was dwelling about the CIO, the way that I had it; they wanted to go there and assemble, not apply for a permit, and no speaker, just talk about an individual.

THE COURT: You don't make any distinction between——

THE WITNESS: I don't make——

THE COURT: No, I am not using that word critically. You don't make any distinction between meetings or assemblages where there are speakers and assemblages where all persons stood silently, do you? I mean with respect to the requirement of a permit; I am not trying to trap you.

THE WITNESS: No, I know that. I don't make any distinction, no. But the questions are very technical that the counselor is putting to me and they are something that I think it is a case for a lawyer to answer.

It is practically on ordinances. My way of reading them might not comply with the law.

Q. Mr. Casey, will you waive the privilege claimed by Mr. Glavin so that he can take the stand and answer these questions, now that you have said you think a lawyer ought to answer them?

THE COURT: It was Mr. Hamill's fault, if I may correct you.

MR. HAMILL: That's right.

MR. ERNST: But on Mr. Hamill's advice Mr. Glavin claimed privilege. Now Mr. Casey says a lawyer should answer it. When I tried to get a lawyer to answer it Mr. Glavin said, on Mr. Hamill's advice, "I claim privilege."

MR. HAMILL: Since you are all set to devour Mr. Glavin I think that I will accommodate you and withdraw the privilege. Judge Glavin will answer your questions.

MR. ERNST: Now, let's go on.

Q. You said there were no arrests made at any one of these three large assemblages in Journal Square and Pershing Field?

A. Not to my knowledge.

Q. In regard to the Veterans' Committee or organization, of which Mr. Hugh Kelly is head, do you know whether that is an incorporated body?

A. I couldn't tell you anything about it.

Q. You never investigated the organization itself?

A. No, never investigated it.

Q. They have protested to you?

THE COURT: Is Colonel Kelly to be a witness, Mr. Hamill?

MR. HAMILL: I don't know. If it develops in the case I will have anybody a witness, but in order to

answer your question briefly I don't know. If I need him I will get him.

THE COURT: Has he been subpœnaed by the complainants?

MR. FRAZER: No, he has not.

MR. HAMILL: I have not consulted with him.

THE COURT: I am only asking because it seems to refer to something that he knew about.

MR. HAMILL: If the Court wants him I will endeavor to get him; he is secretary to the Governor and he ought to be procurable very easily.

MR. ERNST: The witness has answered my question.

Q. In regard to the applications for permits marked for identification or offered in evidence, isn't it a fact that there are none of the envelopes attached to the correspondence except in the cases of the CIO and the American Civil Liberties Union? Do you want to look at them?

A. Well, very seldom anybody keeps any envelopes; they throw they away. I didn't keep them, no, I threw them away. There might be some there. I never save envelopes.

MR. HERSHENSTEIN: May I call Mr. Ernst's attention, there are a number of envelopes attached to these.

MR. ERNST: I just want to know how many.

Q. Will you during lunch hour count them and just let's get the inference for what it is worth, that there are no envelopes showing dates, etc., of receipt except in those two cases and maybe one other, and we will take the answer after lunch.

Commissioner, were you advised by your police as to statements made by Mr. Brophy at the veterans' meeting that rubber hose would be used and violence applied in case CIO or ACLU speakers were allowed permits?

A. I saw it in the public press.

Q. Did you do anything about that threat when you saw it?

A. I did; I consulted the Chief of Police on it.

Q. And he investigated it?

A. Yes.

Q. Did he report to you?

A. Yes.

Q. Is there a written report?

A. No, there is not.

Q. Is that the investigation that you indicated yesterday?

A. That is.

Q. And can you tell me the conclusion of the report; did Brophy deny the threat?

A. He did not; he said, from what his investigation was, just an idle jest.

Q. An idle jest?

A. Yes.

Q. Do you remember what the idle jest in words consisted of as to threat of rubber hose, etc.?

A. I don't remember. It is in the papers, that's where I got my information from.

Q. Police Chief Walsh would know about it?

A. Yes.

MR. HAMILL: I ask your Honor to instruct counsel not to incorporate evidence in his answer. He is the man who brought in the question of rubber hose. There is nothing in this record about rubber hose yet. That is an unjustifiable assumption.

MR. ERNST: I will get it from Mr. Walsh.

MR. HAMILL: I ask it be stricken out, that part of the question.

Q. Commissioner, did you have anything to do with the hiring of buses, the purchase of flags or emblems, the purchase of printing material, the purchase or putting up of bill posters, the hiring of bands, in respect to any of the

assemblages or parades in Jersey City since December 22, 1937?

A. I did not.

Q. Neither directly or indirectly?

A. Not directly or indirectly.

Q. You didn't contribute?

A. I didn't contribute.

Q. Now, Commissioner, I show you a card and ask you whether you recognize it.

A. I do.

Q. It bears your name.

A. That is my name, yes, sir.

MR. ERNST: I offer it in evidence.

(Received and marked Exhibit P-30.)

Q. Mr. Casey, that card was distributed rather widely throughout Jersey City?

A. They are distributed every month.

Q. And by what methods of distribution?

MR. HERSHENSTEIN: Now, if your Honor please, how is that material? Here is a card which was marked in evidence—may I look at it—referring to a meeting at Lincoln High School for Friday, March 4, at 8 P. M.

MR. ERNST: I want to show, your Honor, and there will be no dispute, I think, between the witness and myself, that the card was openly distributed on the streets of Jersey City, left at homes; wide distribution throughout Jersey City around March 4th for this card. March 4, 1938.

MR. HERSHENSTEIN: How is that material?

THE WITNESS: Can I answer that for you?

MR. ERNST: Sure, you can answer it.

A. That was sent up to members of the Safety League, which is a branch of the Jersey City Police Department, which has been running for the last five years.

Q. Was this card——

A. That card is delivered by the man on post, I think, to a member, letting him know that there will be a meeting. That is for a member.

Q. Now, it is distributed for a member, but it is distributed on the street?

A. It is not on the street. It is delivered to a home.

Q. I see. So as far as you know this card and others like it was not distributed on the streets of Jersey City?

A. Not on the streets of Jersey City.

Q. As far as you know. Was the card just put into the mail boxes in the homes?

A. Well, I wouldn't say whether they are delivered in person or put into the mail box. I think they might be put into the mail box. I never went into that, how the man in charge of the Safety League—how he distributes the cards.

Q. But if the evidence shows that the card was distributed on the streets?

A. It was never distributed on the streets. The orders are don't distribute any cards on the street, anything pertaining to the Police Department; and that is the only card that goes out to members of the Safety League who are enrolled in that league.

Q. Commissioner, did you ever speak to Police Chief Walsh in regard to the general question of the granting of permits for meetings and assemblage; did you have conversations with him from time to time?

A. Oh, yes, at all times.

Q. Did you also have conversations with Frank Hague in regard to it?

A. I spoke to Mayor Hague in reference to meetings, certainly.

Q. And with particular reference to——

A. And with other members of the Commission.

Q. That's right. And with particular reference to the granting or denial of the permits we have been discussing in this trial?

A. I used my own judgment on the issuing and rejecting of permits. I spoke to Mayor Hague and the other Commissioners, and they agreed with me, that I was right in refusing the permits.

Q. But you used your own judgment, and you alone had the power, is that right?

A. I have the power. That's the power that is invested in me as Director of Public Safety.

Q. And Frank Hague has no power to deny permits or issue them?

A. That's——

MR. HERSHENSTEIN: I object, if your Honor please. This witness is not obliged to say whether Frank Hague has or has not the power.

THE COURT: The ordinance says the Director, doesn't it?

MR. HERSHENSTEIN: The ordinance says the director.

MR. HAMILL: He says Frank Hague has no power. I don't know whether he has or not. My best judgment is he has not, reading that ordinance.

MR. ERNST: Well, I just wanted to get the record clear.

MR. HAMILL: My judgment is that he has not.

MR. ERNST: I want to get the record clear, because Frank Hague has issued a statement which would lead a reasonable man to assume that he has the power, and that Casey was merely an office boy for him.

MR. HERSHENSTEIN: You have subpœnaed Frank Hague. You can ask him.

MR. ERNST: We are going to. I thought I could get it here from the Commissioner.

MR. HERSHENSTEIN: Then don't ask this witness.

MR. ERNST: I shall ask Frank Hague. Don't worry.

MR. HERSHENSTEIN: I am not worried, Mr. Ernst. But you have taken three hours to ask two questions.

Q. Commissioner, did you hear the corporation counsel in this court, in this trial, say in open court that Jersey City had the power to search and did search all cars with foreign license numbers where there were suspicious people in them?

MR. HAMILL: Who do you mean?

MR. ERNST: Mr. Glavin.

MR. HERSHENSTEIN: I object.

MR. ERNST: I am just asking if he heard it. Won't you please be patient?

MR. HERSHENSTEIN: Why clog the record with questions which are entirely immaterial to the issues involved in this case. It makes no difference whether he heard it or not.

MR. ERNST: It may make a difference, when I come to the next question.

THE COURT: Answer whether you did or not.

Q. Did you hear him say it?

A. I think that's about the time that I come in here. There was some wrangling over it.

Q. It isn't clear in your mind?

A. It is not clear in my mind.

Q. Now, Commissioner, in your exercise of your duties as head of the Department of Public Safety what are the instructions, if any, in respect to stopping automobiles with foreign plates?

A. They don't—it is not strictly foreign license plates. Any car that looks suspicious, the orders of the department,

my orders, are to look that car over, see who is in it. If there is anything suspicious about them, to bring them in and check up on them, which I think I got a perfect right to do under the law.

Q. You don't want to testify on the law, Commissioner, because Mr. Hamill will object to that. I don't want you to talk on that.

MR. HAMILL: I don't know whether that is a matter of law. Have no right to stop a suspicious character or a suspicious automobile? Let us have this out. A police department has no right to stop a suspicious character? Then you may as well abolish detective agencies in every city of this country, if they haven't that right.

MR. ERNST: Just a speech for the audience, Mr. Hamill. I never said anything about it.

MR. HAMILL: I know, but the proposition is to ridiculous that it ought to be heralded near and far as the theory on which the complainants are waging this case.

Q. Mr. Casey, who has the right to decide or who does decide whether a particular car contains suspicious elements, before it is stopped?

MR. HERSHENSTEIN: Now, if your Honor please, I object to that question upon the ground that that is not material. It is not in issue. It has absolutely nothing to do with the issues in this case, as to who determines under what circumstances a car may be searched.

THE COURT: Your assistant corporation counsel gave some opinions on that point. I will let him answer.

MR. ERNST: One of our allegations is that our cars are being searched without reasonable suspicion.

MR. HAMILL: If that is your purpose, then that is perfectly proper. If that is your purpose, go ahead.

MR. ERNST: Wait a minute. I want my question answered. I will put it this way.

Q. Has the cop on the beat got the power to use his own judgment about stopping a car that looks suspicious?

A. He has, if he thinks that that car is suspicious; he has got a perfect right.

MR. HAMILL: Who else's judgment would he use?

Q. And if it looks suspicious to him he has the right to search the car?

A. Yes, sir, he has. That's a ruling of the head of the Department of Public Safety.

Q. And he has the right to search the papers and valises and baggage of the occupant?

A. He has the right to look through the baggage, but not to read the correspondence, I guess, if that is what you are referring to; I don't know.

Q. That's in part. He has no right to look at the papers in a man's personal wallet?

A. He has no right, no. He has a perfect right to search him for guns or firearms or blackjacks.

Q. Now, do you——

A. That's what he does it for.

Q. Do you require a report to be kept by the police whereby they indicate for your judgment every instance where they have stopped a car and searched it?

A. I do not.

Q. You do not. So you have no way of knowing how many hundreds or thousands of cars have been stopped and searched unless the search resulted in an arrest?

A. That's it.

Q. You got no reports from anyone as to searches?

A. I don't get reports. The reports of that nature wouldn't come to my office.

Q. They would go where?

A. They would go to the Chief of Police.

Q. But the Chief of Police in a sense is under you, isn't he?

A. Yes.

Q. Now are you cognizant of the fact that complaints have been made for unlawful search and seizure of automobiles in streets of Jersey City on the basis that there was no ground for suspicion? Do you know of any complaints?

A. If I have, they have been very few. Generally a man that is stopped, he will go along with a policeman, taking it as a real good thing. It is for his protection the same as everybody else, that cars are stopped.

Q. That is, the occupant of the car welcomes being stopped and searched?

A. A lot of them do. Think it is real good police procedure.

Q. And you have gotten commendation on that score?

A. Yes.

Q. That police have stopped the people of Jersey City, I take it?

A. Stopped them?

Q. The people that have actually been stopped have been happy about it?

A. Said it was good police procedure; thought it was a wonderful thing.

Q. Now will you tell me what——

A. And results have proven that.

Q. Tell me what the general regulations are to instruct the police as to when a car or the occupants look suspicious. Have you got any general instructions on that?

A. There is not. That's up to the judgment of the man in charge of that car.

Q. Now, what in particular is that instruction, again, that you say to the policeman on the beat?

A. It is not the policeman on the beat. I think you are talking about squad cars that are touring through the city. They are the ones that I guess you got reference to.

Q. Well, now, let me get that clear. Has anybody outside of people in squad cars got the right to stop an automobile and search the car without a warrant?

A. Any time at all, any police officer, any policeman, no matter what his rank, if a car looks suspicious, that's his orders.

Q. That's right.

A. To search and see what it is.

Q. That's right. So you didn't mean to imply that the searching without warrant of the automobiles on the streets of Jersey City was limited to this particular squad?

A. No, it is not; any police officer.

Q. All right. Now what are the general instructions to that squad of police officers, or the man on the beat?

A. The instructions are the same to every member of the department.

Q. Now what are the instructions?

A. Any time a car looks suspicious, investigate it, see what it is, who they are and all about them.

Q. There is no instruction that gives some kind of a definition as to the word "suspicious"?

A. That looks suspicious——

Q. Just looks suspicious——

MR. HAMILL: I object.

MR. ERNST: I am just asking him are there instructions.

A. That's up to the judgment of the police officer himself, whether they look suspicious or not. He has to use his judgment on that.

MR. HAMILL: The sound discretion of a trained officer.

Q. And the first day a new man is on the force he gets general instructions which include the following: If you see an automobile that looks suspicious you have got a

right to stop it, search the baggage, and you can search completely, but you may not read the personal letters of the occupant, is that about it?

MR. HAMILL: If your Honor please——

A. Well, now, just a minute.

MR. HAMILL: I object.

A. I guess you are going a little too far on that.

MR. HAMILL: Don't answer it, please. These are all hypothetical questions. Has such a thing occurred? When it has, we will deal with the facts and not would you do so and so in such circumstances? This man is not on for that.

MR. ERNST: There is lots of evidence in this record——

MR. HAMILL: Would an officer just appointed be justified in searching a man? I will say yes, if he were made an officer he was selected on grounds of ability, and therefore is capable of entertaining a reasonable suspicion, and if he had a reasonable suspicion, he had a right, then, to investigate. But I object to those questions be asked of this witness. This is a fact witness.

MR. ERNST: This is a defendant.

MR. HAMILL: He can ask him are there any rules. He said no. Now he is asking what would an officer do under certain circumstances.

MR. ERNST: If your Honor please, will you kindly have the question read? Because I didn't ask him at all what an officer would do under certain circumstances.

MR. HAMILL: You said an officer just appointed. I object. Suppose there is no baggage.

MR. ERNST: No, if your Honor please——

MR. HAMILL: Let us assume that that sort of a situation is occurring.

THE COURT: Does he get any instructions at all?

MR. ERNST: That is all I am asking.

A. The instructions that a man gets is like everybody else, general with the police department.

MR. HAMILL: What are the instructions regarding search?

MR. ERNST: Now——

MR. HAMILL: To new officers?

MR. ERNST: Mr. Hamill, you can get to that on cross-examination. I didn't ask what cops did. All I asked was, was there the instruction to a new officer, and I did that because Mr. Hamill injected the idea that trained and tried officers were searching cars.

MR. HAMILL: No.

MR. ERNST: And I took the rookie, that's all, because you opened the door.

MR. HAMILL: No. No, I reframed your question on the principle of assistance to the needy. Yours had been so badly framed.

MR. ERNST: I want the answer to the question, your Honor.

THE COURT: That was my question.

THE WITNESS: The instructions are general, to every man in the police department, in reference to suspicious cars; in his judgment, if the car looks suspicious, he has got a perfect right to look it over, and see who they are, ask them who they are. If they are all right, and they prove themselves satisfactory to the officer, they are allowed to go on their way.

Q. Are there not men stationed at particular spots at the entrance to Jersey City with particular instructions to stop and search cars?

A. There are.

Q. There are. And how many such men are there in the police department?

A. There is four squad cars. By that I mean with five men in those cars.

Q. For the particular purpose of searching, stopping cars?

MR. HERSHENSTEIN: Under certain circumstances, Mr. Ernst.

MR. ERNST: You can cross-examine as to the circumstances. I hope you do.

MR. HERSHENSTEIN: Well, don't let the record stand that they may just stop cars.

Q. Have those men any particular instructions to stop cars that are old or are not expensive, or the drivers wear caps or Negroes in them, or labor labels on the sides of the cars, or anything else?

A. They are instructed to stop any car that looks suspicious.

Q. Do they ever come back and ask you and Mr. Walsh about borderline cases?

A. About what?

Q. About borderline cases?

MR. HAMILL: I object unless the witness knows what he means.

MR. ERNST: I just asked him if they ever asked about it, not what they asked.

MR. HAMILL: Ask him the twilight zone. He might understand that. Or the no man's land of the law.

Q. Do they ever ask you about cases that they are in doubt about?

A. They do not.

Q. Never have?

A. I don't come in contact with the men running the squad cars.

Q. And they would ask Walsh——

A. They come in contact—there is a man in charge, a captain of police, who they come directly under. They make their reports to the captain, which I am not interested in.

THE COURT: Ten minutes recess.

(At this point a short recess was taken.)

(After recess.)

DANIEL CASEY, resumes the stand.

By MR. ERNST:

Q. Commissioner, do you remember testifying in a case which came into the United States Court around March, 1937, of the American Civil Liberties Union and various other plaintiffs against Daniel Casey and Harry Walsh, do you remember testifying in the case?

A. Yes.

Q. I think it will facilitate everybody on time if you will take this record of the case, and I can refer to page references. Will you look on page 412. Do you see a question and answer which read as follows:

"Q. I mean anyway, have they a right to shove them around anyway?

"A. They have a right to escort them out if they are doing anything wrong. If the case don't warrant arrest they have a perfect right to do it."

Do you see that?

A. On page 412?

Q. Yes. Maybe I can help you locate it.

THE COURT: That is Walsh, isn't it? In my testimony it is in Walsh's testimony, isn't it? 412—oh, you have a printed record.

MR. ERNST: Printed record, page 412. It is on 411. I want to correct that.

Q. Do you see that testimony?
A. Yes.
Q. Did you so testify?
A. Yes.

MR. ERNST: Now may I ask, your Honor—I want to ask counsel for the defendants whether they will not agree with me that we can save time by having me read various portions of this testimony. I will then ask the witness just two questions, did he so testify and is he of the same opinion now.

MR. MATTHEWS: I object, if your Honor please.

MR. ERNST: The defense then can introduce such other portions of the testimony as they see fit.

MR. MATTHEWS: I object, your Honor please. The proper way to do it is to confront the witness with the question. No breach of that rule will be tolerated or consented to by us.

THE COURT: I imagine, Mr. Matthews, it is not for the purpose of contradicting the Commissioner just to save time by having him testify the same way if he so desires.

MR. MATTHEWS: We object to that. Your Honor knows the objection is well put. You haven't any right under the rules of evidence to allow that procedure. I interject myself at this point because the question is asked of all counsel, and after this witness leaves the stand I will be largely responsible for the conduct of this case. Now, I lodge this objection on the ground it is contrary to the rules of evidence and the rules of procedure in the examination of a witness.

MR. ERNST: I would just like to get from opposing counsel the following: I understand that the suggestion I made in order to same time is not accepted. Then you made a proposal, as I take it, as to how we could go forward and save some time.

MR. MATTHEWS: I refuse to become instructor for counsel for the petitioner.

MR. ERNST: I thought you were making a suggestion; I am sorry, sir.

MR. HAMILL: Let me know what you want, I am counsel of record in this case and I will tell you what you can put in and what you can't put in. What is it you want to get in?

MR. ERNST: There are various statements that the witness here made under oath in a previous case.

MR. HAMILL: Well, the difficulty with this is——

MR. ERNST: You asked me a question; do you want me to answer it?

MR. HAMILL: Yes, I do.

MR. ERNST: I only want to know whether he made those statements and whether he still agrees with them, that's all.

MR. HAMILL: Well, you can ask him did he make a certain statement in a certain case. That is nothing more than confronting your witness with a statement made in another place.

MR. ERNST: I will make no more attempts to save time. If your Honor please, we will have to go through it in the dreary way.

MR. MATTHEWS: Now, if your Honor please, that comment, if in answer to my objection, if he wants to make it the dreary way we cannot help it.

MR. ERNST: I resented your statement, sir, that you objected. I made a proffer in aid of convenience and you came back and posed an objection as if I had raised a legal right. You know well that I offered something as a convenience for you.

MR. MATTHEWS: If you cannot distinguish between a legitimate objection and your pleasure that is not my fault, sir.

MR. ERNST: Well, you may learn more about that later.

MR. MATTHEWS: Not from you, sir.

Q. Now, Mr. Casey, did you or did you not testify in the case I refer to as follows, in answer to questions, and if you will take this and we will have to read it through:

"Q. If a policeman sees a man committing a disorderly act what are his duties, to arrest him?

"A. Well, at times. It is according to what it is. Trifling violations, that I would consider trifling violations, I don't think a man should be arrested for.

"Q. What should be done?

"A. A warning.

"Q. I see. What is the alternative to a warning? Suppose the man doesn't take the warning, what is the alternative?

"A. If he doesn't take the warning, if it is something that is of a trifling character—it is according to what the crime is at all times.

"Q. Well, you have mentioned warning. What else has a policeman a right to do besides warning a citizen?

"A. Well, they have a perfect right to arrest a man.

"Q. So we have warning and arrest.

"A. Certainly.

"Q. What else has he a right to do if a man does not obey him?

"A. If he doesn't obey him he has a right to arrest him.

"Q. Has he a right to do anything other than arrest him?

"A. Well, as I just told you before, Mr. Hays, it is according to what the case is.

"Q. Well, you mentioned warning and arrest.

"A. Yes.

"Q. Outside of those two has he a right to do anything else?

"A. An officer has got a perfect right to lock a man up for a traffic violation, hasn't he?

"Q. Yes.

"A. He gives him a warning for it, doesn't he?

"Q. Now, listen. You mentioned two things an officer has a right to do. Has he a right to do anything else than either warn a man or arrest him? Has he a right to do anything else?

"A. That is according to what the crime is, what the man has done.

"Q. What else can he do in any crime other than warn and arrest him?

"A. That's all he can do."

I want to stop there.

MR. HERSHENSTEIN: Now, if your Honor please——

MR. ERNST: Just a minute.

MR. HERSHENSTEIN: Beg pardon, I thought you had finished.

Q. I just want to ask: Did you so testify in that case?

MR. HERSHENSTEIN: Your Honor please, I object to that question upon the ground that it is not proper direct examination of any witness. Counsel may ask this witness now as a fact what he thinks the duties are and the rights of policemen and if his testimony should be contradictory of something which he stated

in another case he may be confronted with his testimony for the purpose of showing he testified differently.

THE COURT: I think that is technically correct.

MR. HERSHENSTEIN: But I say it is very improper to take the record in which this witness testified and say "Didn't you so testify?"

THE COURT: Can you hear me? I think technically you are right. It would take, I imagine, another half hour. I have no objection——

MR. HERSHENSTEIN: Well, I don't know whether it would take another half hour. Perhaps those questions aren't at all material to this issue.

MR. ERNST: I want to ask the witness this question. We might be able to save some time.

Q. You heard me read some questions and some answers, and I ask you now whether those answers state your present position as to the rights of policemen——

MR. HAMILL: I object.

Q. (Continuing.) —in those circumstances.

MR. HAMILL: Don't answer. I object. Not unless we would know all of the circumstances and the whole of the case in which that evidence was given. That evidence was given with reference to a particular case before your Honor.

MR. ERNST: Your Honor, I withdraw it. I withdraw the whole proceeding.

MR. HAMILL: All right.

MR. ERNST: Along this line. I am going to ask the questions.

MR. HAMILL: Ask him what are his opinions now.

MR. ERNST: I am not going to ask him what you suggest. I am conducting the inquiry. You can cross-examine.

MR. HAMILL: I am making my objection, sir, to the Court, and——

MR. HERSHENSTEIN: He withdrew the questions.

MR. ERNST: I withdraw the questions, Mr. Hamill.

MR. HAMILL: That has nothing to do with my motion. That does not preclude my addressing the Court; and the purpose now is to find out under what rules he acted at the time the things were done which are at issue in this trial.

MR. ERNST: All my questions on this line are withdrawn and I ask the following:

Q. Commissioner, I am right, I think, when I say that you do know what the rights and duties of the police are, am I not?

A. Yes.

Q. If a policeman, Commissioner, sees a man committing a disorderly act, what are his duties?

MR. HAMILL: I object.

MR. ERNST: Wait a minute. Let me finish my question.

Q. (Continuing.) What are his duties—to arrest him?

MR. HAMILL: I object. That's a legal question.

If a policeman sees a man committing a disorderly act, what are his duties? Now the evident answer is that one of his duties is to arrest him, but why is it necessary to ask the question of a witness when there is a legal question that the Court will pass upon? If a policeman sees a man committing a disorderly act, what are his duties? A lawyer will answer that question. The law will answer it.

MR. ERNST: If your Honor please——

THE COURT: Can't you save time, Mr. Ernst, by asking the Commissioner if in his opinion under any circumstances the police have a right to deport persons?

MR. ERNST: Well, I think I——

MR. MATTHEWS: That would be objectionable, with respect to the Court, and we do object to that question; that question using the word "deport," and at this stage of these proceedings, is not purviewed by either the pleadings of the case or any of the evidence that I have heard from this witness thus far. I would object to it, with respect, as your question.

MR. ERNST: Your Honor, we are in this embarrassment, with the shift of counsel.

THE COURT: Yes, I do think——

MR. ERNST: Probably the new counsel does not know that we have spent hundreds of pages——

MR. MATTHEWS: Every one of which I have read. I have read it all.

MR. ERNST: Relating to deportation.

MR. MATTHEWS: I have read it all.

MR. ERNST: That the bill alleges a conspiracy and a plan within which this man is a part—— .

MR. MATTHEWS: I have read it all, Mr. Ernst. I have read it all.

MR. ERNST: I just want to finish my statement. Within which this man is a part——

MR. MATTHEWS: Thank you, but I have read it all. You are wasting the Court's time and mine. I have read it all. I have read the whole testimony.

MR. ERNST: If your Honor please, may I continue uninterrupted a moment?

THE COURT: Yes.

MR. ERNST: I didn't interrupt you.

MR. MATTHEWS: Well, I don't want you to tell it to me; tell it to the Court.

MR. ERNST: I want to tell it for the benefit of the new counsel, if needed.

MR. MATTHEWS: It is not needed.

MR. ERNST: You need not listen, sir.

MR. MATTHEWS: I am listening but I am bored.

MR. ERNST: With the record I am content. This man is—let's stop this nonsense—this man is a party defendant to our plan, a conspiracy, of people to deport American citizens.

MR. MATTHEWS: Now, that statement I object to, if your Honor please, as very contemptuous of your Honor, if your Honor doesn't realize it. Here is a statement by counsel accusing this man of crime.

THE COURT: If you will allow me, Mr. Matthews, I think I can take care of myself.

MR. MATTHEWS: Well, maybe so, but you don't seem to be in that instance, with respect to you, when he charges that against a citizen of a community, and as long as I am in this case, sir, and for the sake of this record, I again repeat that it is contemptuous of your Honor.

THE COURT: That is your opinion, Mr. Matthews.

MR. MATTHEWS: My opinion, sir, as an officer of this court.

MR. ERNST: If your Honor please——

THE COURT: I appreciate your solicitude.

MR. MATTHEWS: Thank you.

MR. ERNST: If your Honor please, I think that I ought to make this statement to clear up this confusion. Possibly in reading the record the new counsel did not realize that we had a lengthy debate as to the meaning of the word "conspiracy" in relation to the pleadings, and for him to attack me for contempt of this Court and say he has read the record would require an apology if I cared to ask for one from him.

MR. MATTHEWS: I will not give it.

MR. ERNST: I am going to continue my questions. I am sorry I can't limit it to just the word "deport," because I will be faced with this kind of argument.

Q. Well then, I am right then, when I say that you do know what the rights and duties of the police are, am I not? Will you answer that, Mr. Witness, please?

A. I am.

Q. If a policeman sees a man committing a disorderly act what are his duties? To arrest him?

MR. HERSHENSTEIN: I object to that, if your Honor please.

THE COURT: He may answer. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. To arrest him; if the case don't warrant it, a trifling violation, warn him.

Q. Does it make any difference whether it is a trifling violation or not?

A. The policeman is to use good sound judgment, whether—he will consider the case, who the man is, before he would lock him up.

Q. I want to ask my question again, Commissioner. It is very simple. Does it make any difference whether it is a trifling violation?

A. (No answer.)

Q. I didn't ask you anything about the man; just the simple question, does it make any difference whether it is a trifling violation?

A. It is according to what the case is, whether to lock him up or not.

Q. Does it make any difference whether it is a trifling violation?

A. It is up to the judgment of the policeman.

Q. Does it make any difference whether it is a trifling violation or a big one, to the policeman?

A. He considers it, yes.

Q. He does? That's all I want. That's fine.

MR. HAMILL: Your Honor, may I at this point say this, that that question is not a proper question, is it a trifling violation or a big one? In the exercise of sound judgment, if one citizen would nudge another, it would be a violation of the law, but it would be a stupid thing for a policeman to arrest him for it. Of course he exercises some judgment, I suppose, and the Commissioner, the Director, has said in the exercise of his sound judgment, which I submit is a good rule.

MR. ERNST: It may be of some passing interest to note that the questions were asked in a case where Mr. Glavin and I think Mr. Hamill were also counsel and not objected to.

MR. HAMILL: That is the trouble, Mr. Ernst. You were not in that case.

MR. ERNST: All right.

MR. HAMILL: And you have not read that whole record, have you?

MR. ERNST: Yes I have, sir.

MR. HAMILL: Well now it is a fair remark to make that you don't recollect all that is in that record.

MR. ERNST: No, I certainly don't recollect all that is in that.

Q. Now I want to ask you, Commissioner, in the case where there is a trifling violation, you don't think a man should be arrested for it, do you?

A. No I don't.

Q. What do you think should be done?

MR. HERSHENSTEIN: I object, if your Honor please, to what this witness thinks should be done with somebody who commits a trifling violation. Now it is not material, it is not relevant to the issue in this case, if your Honor please, and it certainly serves no purpose.

THE COURT: I will allow it. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. What is the alternative for a warning, Commissioner? Suppose the man doesn't take the warning, what is the alternative?

MR. HERSHENSTEIN: I object to that, if your Honor please. Supposing a man doesn't take the warning, what is the alternative? Certainly it isn't material to the issues of this case. It is a conjecture.

MR. ERNST: Your Honor, we have evidence here in the record already of arrests, of warnings, of warnings followed by arrests, of every element that is in these general questions.

MR. HERSHENSTEIN: Mr. Ernst may think so, but I don't agree with him.

THE COURT: You may answer. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. HERSHENSTEIN: I think the record is barren of any such evidence.

Q. Will you answer the question?

A. What is the question again?

Q. (Pending question read by the reporter.)

A. Well it is up to the policeman, what he should do, whether he should lock him up or just shove him out of there.

Q. Now you have mentioned warning and you have mentioned arrest; what else has the policeman the right to do besides warn or arrest a citizen?

MR. HERSHENSTEIN: I object to that question upon the same ground, as to conjecture.

THE COURT: I think that's too general, Mr. Ernst.

MR. ERNST: That's too general?

THE COURT: I think that is too general.

Q. Have the police the right to shove a man around?

MR. HAMILL: I object to that.

MR. HERSHENSTEIN: I object to that, your Honor, to asking him whether they have a right to shove a man around.

MR. FRAZER: May I ask the Court to warn counsel to confine the objections to one counsel when there is a single witness? We have been holding a rodeo here, with three counsel performing.

MR. ERNST: In disagreement, may I add, at times.

MR. FRAZER: At times in disagreement, but it seems to me that if Mr. Hershenstein is the witness' counsel, he should make the objections and Mr. Matthews and the others should not get up.

MR. HERSHENSTEIN: Why did you object?

MR. MATTHEWS: I made my objection because it was a general objection, may it please your Honor, but not

as an objection to the testimony of the witness. I agree with Mr. Frazer that one counsel should examine him. I think Spaulding was a bit miffed, though, because of the fact that I signaled to Charlie that I thought it would be a good objection.

MR. FRAZER: Not at all. Any time you feel like signaling, you may do so.

MR. HAMILL: Let's get this down. Isn't it in the sound discretion of the Court how many shall answer?

THE COURT: I say that—I don't suppose I should introduce my personal feelings but it is very trying to have three counsel objecting, and I might further say some of them with some apparent personal bitterness. So far we have been free from that in this case and I would like to have it continue.

MR. MATTHEWS: No personal bitterness, but there is nobody in this case, if I can help it, as an officer of this Court, who will make it a special interest story room instead of a court room, your Honor.

THE COURT: I think that, Mr. Matthews, if you will allow me to say so, is not very courteous.

MR. MATTHEWS: Well, I didn't mean it to you.

(Question repeated by the reporter as follows: "Have the police a right to shove a man around?")

MR. HAMILL: I object to the question as being indefinite.

THE COURT: Now, have we agreed which counsel will object?

MR. ERNST: I am flattered by the overwhelming number but I think we can proceed quicker if it is limited to one.

THE COURT: I shall have to insist that one do it at a time.

MR. HAMILL: I shall take it then. My objection is it is too general, my point being that nobody has a right to shove anybody around under ordinary circumstances.

MR. ERNST: Now he is testifying, your Honor. Let the witness say that.

THE COURT: You may answer.

A. Well, nobody has got a right to shove anybody around, but in cases where it warrants it or to stop disturbances, and the duties of a policeman to break it up, he has to shove people around. You can't lock up everybody that is in that crowd where there is a disturbance.

Q. You mean that if the policeman shoves a man gently around in some circumstances he is proper in so doing?

A. It is according to what the case is. It is up to the judgment of the policeman that he use good judgment when he does shove anybody around and have a cause for it whereby if he is locking that person up and taking him out of there, that it is going to cause a lot of trouble to try to disperse crowds, and they have to shove them around to do it. Even in parades you have to shove them around to keep them back from the line of parade. I don't say that that person should be locked up because somebody behind him is shoving him.

Q. Commissioner, have the police a right to escort people out of town if the people are doing anything wrong?

MR. HAMILL: I object to him answering that question. It is a legal question. What is your opinion on it?

MR. ERNST: You can put me on the stand, Mr. Hamill, and I will testify.

MR. HAMILL: Well, I will take you without being sworn. What's your opinion?

MR. ERNST: No, I will testify when I am on the stand.

THE COURT: You may answer.

A. Where a man—my opinion is that a policeman has a perfect right to escort anybody from the seat of danger.

Q. They can escort them out of town?

MR. HAMILL: He didn't say that.

THE WITNESS: I didn't say out of town.

MR. ERNST: I didn't say he said it; I am asking him the question.

MR. HAMILL: No, but you quoted Mr. Ernst as if you were reciting what he said and I wanted it to be understood.

Q. Commissioner, have they a right to escort people out of town, out of Jersey City?

A. To escort them out of it? It is according to—it is according to what the case is, and for the protection of the person that they are escorting they have got a perfect right, in my judgment, to escort them and protect them where they won't be molested.

Q. Do I understand you to testify that they have the right under certain circumstances to escort people out of Jersey City?

MR. HAMILL: I object unless he states the circumstances.

MR. ERNST: Under any circumstance.

MR. HAMIL' The question is too vague.

MR. ERNST: The Commisisoner himself indicated two circumstances and I don't think you want to limit him to the two circumstances.

MR. HAMILL: Suppose, for instance, a mob was after him to kill him, wouldn't any citizen have the

right, or be under a duty in fact to save his life and to escort him any place, not only to escort him, to escort him in those circumstances against his will, even though he says "I want to be killed?" There is a law against suicide and they would take him.

A. It is not a right, it is good judgment, in the protection of the person's life.

Q. And you approve it at times?

A. I approve of it, yes.

MR. HAMILL: Approve of what? Not approve of the escorting, he approves the escorting to save their life.

THE COURT: That's what he said.

MR. HAMILL: That's understood.

Q. Do you approve of escorting people out of Jersey City for purposes other than saving their life?

A. What's that? I didn't get it. Your back was turned to me.

Q. Sorry.

(Question repeated by the reporter.)

MR. HAMILL: I object unless he states the other purposes. This is a very difficult question to answer.

Q. Any other purpose than saving life.

MR. HAMILL: Well, he may not have in mind any other purpose.

THE COURT: Then he can say so.

MR. HAMILL: It is personal safety that is engraved there.

MR. ERNST: You don't have to tell this witness how to answer my questions in your objections, Mr. Hamill, let him testify.

MR. HAMILL: The difficulty is, Mr. Ernst, that your questions are asked and ought to be asked of a lawyer instead of a layman. That has been my objection all along.

MR. ERNST: Your Honor, these are the identical questions asked before and Mr. Hamill appears in the record as counsel with no protest of vagueness.

MR. HAMILL: That's all right; because we didn't object there is no reason we shouldn't object here, I take it: this is a different proceeding, your Honor.

THE COURT: That's right.

Q. Will you answer the question, Mr. Witness, please.

A. Well, where trouble is going to start and riots and disturbance, where people would be manhandled and general trouble, I think, my opinion is that a policeman has a perfect right to remove the cause of that disturbance no matter what it is, whether it is general or what the disturbance is.

Q. The case that you are now giving, I take it, and justifying is one where there is a congregation of people, sort of an angry crowd,—I don't know the exact word you used,—who put in peril the safety of a human being.

A. That's right.

Q. And in order to protect his safety he may be deported?

A. I don't say he is deported.

Q. Escorted out of town.

A. To a point of safety.

Q. And it may even be out of town?

A. I don't say that he should be put out of town, I say take the man to the best place to protect him; if he is a nonresident, if he wants to go to New York, well and good, let him go.

Q. And protect him from what, from some other people?

A. Certainly.

Q. And so you would say that the purpose of this escorting outside of Jersey City or within Jersey City is to protect an individual from a group of other human beings who are threatening his safety?

A. Right, from mob violation.

Q. And would you say that unless there was this threat from other human beings that the policeman would not be justified in escorting a man outside of Jersey City?

A. It is according to what the case is. I cannot give you an answer——

Q. Give me one.

A. (Continuing.) —to that question without you telling me something or specifying some case where it happened and I will try and enlighten you on it.

Q. Let me have the case—oh, you want me to give you a case?

A. Yes.

Q. Well, are you familiar with the escortings or deportations of November 29, 1937, in Jersey City?

MR. HAMILL: I object.

MR. ERNST: He asked me to give him a case.

MR. HAMILL: No, but Mr. Ernst, look at your question. That question is unfair because it assumes something—are you familiar with the escortings or deportations of November 29th.

MR. ERNST: He can say yes or no.

MR. HAMILL: Now, has there been any deportation? That is your conclusion, that it is a deportation.

A. I don't know of anybody being ordered out of Jersey City on November 29th, to the best of my recollection.

Q. Do you know of anybody to whom the suggestion was made by the police that maybe for their safety they should go out of Jersey City on November 29th, you don't even know about that?

A. Offhand I couldn't tell you unless you state what the case is to me.

MR. HAMILL: And of course, your Honor please, right here I object to the word "deportation." If it is used in the sense of illegal expulsion from a city; if it is used in the sense of permitting a man or even taking a man for his own safety out of the limits of the city, then the word is properly used.

Q. Commissioner, are you familiar——

MR. HAMILL: It is not the first time that a term which connotes one thing is used to describe another totally different.

Q. Commissioner, on November 29, 1937, some CIO organizers and sympathizers distributed leaflets in Jersey City and are you familiar with such events that surrounded the distribution?

A. I know about it, yes.

Q. Do you know whether or not there was any mob or group of people threatening the safety of the distributors of the leaflets—just does he know.

A. I think we referred to that case, the statements of Mr. Carney, how he was going to invade Jersey City, in the public press three or four days before he came in here.

Q. Mr. Casey——

A. That was why we took that precaution, I remember about that.

Q. But you don't know whether there was any mob or group of people or a single person who on November 29th threatened the safety, the physical safety of the distributors of those leaflets, do you?

MR. HAMILL: I object unless we see the relevancy of it.

MR. ERNST: He asked me for an instance.

MR. HAMILL: Well, I think we have had instance enough then unless this is relevant. Now, there has been conducted of this witness an inquiry asking him to interpret rules of law and the best he can say is "I would obey the ordinance and my officers would use their sound judgment under the circumstances." Now, that sound judgment would be exercised according to the circumstances and would motivate the officer to do different things at different times. That's all that can be said and all of this inquiry is thoroughly irrelevant.

THE COURT: You may answer.

Q. Answer the question.

MR. HAMILL: I object to the question.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

A. I do know that there was a crowd down around Exchange Place. I know men were taken from Exchange Place handing out leaflets there; they were going into the Harborside Warehouse,—if you want what the case is I will tell it to you.

Q. You weren't there. Just let's get your impression.

A. They went there for to protect them people that come in here, I guess two or three hundred strong, and marched down Montgomery Street; it was illegal. We took the leaders before they got down around the tube, tried to stop them, and disband them. They refused to do it, went down there and caused commotion. Before there was a riot there those people were taken to a certain part of the city and released. It was their protection, to stop riot and bloodshed, down around that Harborside Warehouse that they were taken away.

Q. Whom did you get this version of events from, Counselor?

A. From the chief of police.

Q. The chief of police. And did you also get from the chief of police this word "invasion" that you mentioned?

MR. HAMILL: I object to this question and should have objected to the question that was answered. He was asked what was his impression of what happened. Now, what difference does it make from whom he got that impression if he believed in the impression?

Q. You didn't order the arrests personally, did you Commissioner?

A. I didn't order the arrests, that is the duty of the chief of police.

Q. That's right. Now, you said you to a report from the chief of police. I merely ask whether I am fair in assuming that in that report this word "invasion" appears.

MR. HAMILL: No, I object unless it is proved that it did appear.

MR. ERNST: I want to know whether to pin it on this man or the chief of police.

THE COURT: You may answer; you may have an exception.

A. Well, to begin with, I as head of the department—

MR. HAMILL: I think the Court has ruled.

THE COURT: Yes, I allowed him to answer.

MR. HAMILL: Your Honor will grant me an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Just whether you got it from the chief of police the word or not. Very simple.

A. I told the chief of police; it was my orders to the chief of police if that is what you want.

Q. That's right. It was your orders?

A. My orders——

Q. Because——

A. Now, let me explain it to you.

Q. Your orders, because——

A. It was my orders to the chief of police when I see that article, I think it was in the Bergen "Record," where they were going to invade Jersey City two thousand strong; I told him I didn't want any disturbances down there, not to allow them to do it. "If there was any disturbances it is your duty to prevent this invasion, prevent trouble, and if you think it warrants it the leaders, to take them to a spot anywhere in the city for their own protection and for the pr ' ction of the city, that we would have no disturbances or riots and turn them loose, let them go where they felt like going."

Q. Now, Commissioner, it was on the strength of this article that you saw in the newspaper that you——

A. Several papers I seen it in.

Q. Several?

A. Several.

Q. Several papers. You mentioned one specific one.

A. Well, I did.

Q. That's right.

A. That was the first one I saw it in.

Q. Wait a minute. It was on the strength of that article that you came to the conclusion that Mr. Carney was going to invade Jersey City, is that right?

A. Yes.

Q. Did you get in touch with Mr. Carney to find out whether he had been properly reported?

A. It was Mr. Carney's duty, or it was Mr. Carney's pleasure, to tell me that he was going to do it, if he felt like it. It wasn't for me to consult Mr. Carney.

Q. Did Mr. Carney——

A. That is the way I looked at it.

Q. Did Mr. Carney ever tell you personally that he was going to invade Jersey City?

A. He did not.

Q. So the only basis for your concluding that there would be an invasion was the item in the newspaper, right?

A. That is right.

Q. And you didn't bother to check it up with Mr. Carney?

A. The result——

MR. HAMILL: Mr. Ernst, if you want Mr. Carney's statement, I am going to give it to you.

MR. ERNST: No, you can cross-examine him later.

MR. HAMILL: It might save you from asking these questions.

MR. ERNST: I don't want you to save me anything.

MR. HAMILL: Here is Carney's statement, if you want it, and here is the heading, "Prepared for invasion, C. I. O."——

MR. ERNST: If your Honor please, may I continue my examination?

THE COURT: What paper is that?

MR. HAMILL: This is the Newark Evening News.

MR. ERNST: They can produce it later, if your Honor please.

MR. HAMILL: Of Tuesday, November 23, 1937. I will show it to your Honor. "C. I. O. prepared for invasion."

MR. ERNST: If your Honor please, I object to this interruption of my examination.

MR. HAMILL: "Plans for a showdown between C. I. O. and 'I am the law' Hague have been completed."

Mr. Carney uses the word "invasion."

MR. ERNST: Mr. Carney doesn't use the word "invasion."

MR. HAMILL: The newspaper uses the word "invasion."

MR. ERNST: That is different, sir.

MR. HAMILL: And that's where he got the word "invasion."

MR. ERNST: And that's the gist of your mistake, and I am glad to get the admission.

MR. HAMILL: My mistake! Why here it is here, and there is where he got the word "invasion." Mistake! Read it.

MR. ERNST: Mr. Carney will take the stand that he never so said, so don't let's waste time now.

Q. Mr. Commissioner, you detailed men down there because you had read some items in the newspaper, is that right?

A. Yes, sir.

Q. And how many men did you detail?

A. I didn't detail the men. I told the chief of police to detail them. I don't handle the men of the department.

Q. And did you tell him how many men to detail?

A. I did not. He was to use his own discretion on it.

Q. All right. Commissioner, let us get back to the old point. Do you say that the police under certain circumstances have been given instructions that they have a right to put people out of Jersey City, is that it?

A. I gave them that instructions. That was my orders to the chief of police.

Q. And your instructions said that they have a right to put them out of Jersey City if they are undesirable?

MR. HAMILL: Oh, no, he didn't say that. I object to that.

MR. ERNST: I am asking the question.

MR. HAMILL: He didn't say that.

MR. ERNST: He can say no.

MR. HAMILL: You would like him to say it, but that is the very thing he won't say.

Q. Didn't your instructions indicate that they could be put out of Jersey City if they are undesirable? Yes or no. Did your instructions contain it?

A. Not in this case that you are talking about.

Q. Did they in any case, in your instructions, provide that people could be put out of Jersey City if undesirable?

A. It might have happened, yes.

Q. It might have happened. Do you know whether it did happen?

A. I might have given them instructions some time ago.

Q. Do you recall whether or not around March, 1937, your instructions provided that they have the right to put people out of Jersey City if they are undesirable?

A. That was the way that I thought myself at that time.

Q. And when did you change your mind, since that time, if you have changed it?

A. Well I got a perfect right to change my mind. It is according to what the case is and what it warrants.

Q. You admit that your mind was made up in March, 1937, that you had a right to deport people if they are undesirable, as you said at that time?

MR. HAMILL: No, he said it depended upon the circumstances; it depended on the circumstances. All of these rules get down to what happened in that case tried before your Honor, and this is nothing more than an attempt to trap the witness into making a statement which in his mind refers to a state of facts but on the record it looks like the expression of a general rule.

MR. ERNST: If your Honor please, I am not referring to any case, and I can't imagine what case Mr. Hamill is referring to.

MR. HAMILL: I am referring to that one that you have in your hands.

MR. ERNST: Oh, this is not in evidence.

MR. HAMILL: Yes.

MR. ERNST: You objected to it.

MR. HAMILL: But you are reading questions——

MR. ERNST: Oh, no, Mr. Hamill. Don't be silly.

MR. HAMILL: You are reading questions from that record. You don't want us to doubt the evidence of our own eyes?

MR. ERNST: I am asking questions. I tried to read from the record and you objected.

Q. Mr. Commissioner——

MR. HAMILL: All your questions are framed from information in that record, and unless we know the whole record your questions do not always apply to this case.

Q. Do your instructions to police provide that they have a right to escort people out of Jersey City if the people have no right in Jersey City?

A. My instructions are different in every case as it presents itself to me. I think what the proper thing we should do, and my instructions are to that effect.

Q. Are there some circumstances under which your instructions provide, *some circumstances*, provide that the police have a right to escort people out of Jersey City if the people have no right there?

MR. HAMILL: I object. His rule of conduct is all stated in that last question——

THE COURT: It seems to me it is the same question, Mr. Ernst.

MR. HAMILL: It is the same question, which has been answered over and over again.

MR. ERNST: He didn't answer it before.

THE COURT: I thought he did.

MR. ERNST: No, the implication of his answer was that it depends on the circumstances of the case, but he did not yet admit that under the circumstances of certain cases he believes that the police have the right to escort people out who are undesirable and have no right there.

MR. HAMILL: And what good would that be evidentially, unless we knew the cases? Under certain circumstances you have the right to do anything. Under certain circumstances you have a right to kill people; for instance, if they go to kill you.

Q. Commissioner, who is to make up their mind or the policeman's mind whether a person is undesirable and whether or not he should be escorted out of Jersey City?

A. If there is a detail there, it is in charge of the ranking officer.

Q. That is the man in charge?

A. The man in charge of a detail at all times.

Q. And should the man in charge ask his superior, or does he work on his own judgment, as to whether a man should be taken out of town?

A. It is according to what the case is, and what it warrants. If it is for the protection of the man or for the protection of the citizens, that's his orders.

Q. But, Commissioner, so that your instructions are, among other things, that if the sergeant of the police or the captain or lieutenant deems a person undesirable, that a policeman can put them out of Jersey City?

A. He has——

MR. HAMILL: I object. He has not said that. He has said that they used their judgment in the circumstances. There is an evident intention and purpose on the part of counsel to try to get that squarely on the

record as a rule to be followed. The director has told him that any rule, and that rule in particular, rests on the circumstances of the case. This is only an attempt to entrap a witness, and I therefore object to the question.

Q. Commissioner, I want to show you page 413 of the case I referred to before, to refresh your recollection, as to your position in regard to the subject, and if you will bear with me a moment and let me read, it may help you refresh your recollection.

MR. HAMILL: I object on the ground that what took place in that case is not relevant in this case except that he may call the attention of the witness to a certain statement and ask him whether he made it or not.

THE COURT: I thought that was what he was doing.

Q. Mr. Commissioner, I want to call your attention to a certain statement, and I ask you whether you made it or not. The statement was:

"Well, that's the instruction, yes."

Did you make that?

MR. HAMILL: Referring to what? I object to that.

MR. ERNST: Referring to a question, "So that your instructions are if the sergeant of police or the captain or lieutenant deems a person undesirable, that a policeman can put them out of Jersey City."

MR. HAMILL: I object.

MR. ERNST: Let me finish. "Are those the instructions?" "A. Well, that's the instructions."

MR. HAMILL: I object. Don't answer these questions until I tell you.

THE COURT: He may answer them at two o'clock.

MR. HAMILL: I object, not unless he knows.

(Noon recess.)

AFTERNOON SESSION:

DANIEL CASEY, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. ERNST:

Q. Commissioner, do you decide in a particular case whether or not there is a strike?

A. It is not for me to decide that there is a strike; if I do hear there is a strike in any factory or anywhere in our city I make it a point to find what the facts are concerning the strike, what it is all about.

Q. And do you decide whether or not the workers can picket or not?

A. I don't decide whether they can picket or not; I have no objections to picketing.

Q. Commissioner, I show you page 422 of the record previously referred to in order to refresh your recollection——

MR. HAMILL: Your Honor please, I thought we settled that this morning; I thought your Honor agreed with me when I said it is not what his opinion might have been then, what does he think now.

THE COURT: I am not sure that this is for that purpose. This may be to contradict. What is it, Mr. Ernst?

MR. ERNST: No, this is not to contradict, this is to make sure that the witness is giving his full and correct answer and he might be aided by looking at his testimony in March, and I am only going to ask him when he has read it to find out if he has been aided and then ask him if he stands by his answer and then I will ask him when he changed, if he did change. Now, the chances are he will not have changed on any of the matters. That will simplify it. I think I have a right to ask him to refresh his recollection from any document. He is my witness.

THE COURT: Just show it to him.

"Q. A strike is on is a matter for the police to decide, is that right?

"A." —Your answer, Mr. Casey. "Just a minute. It is a strike where there is a question about whether it is a strike or not.

"Q. Well, whether there is a question about it or not is decided by the police department, is that right?

"A. No, we don't decide if there is a strike or not. We decide whether they can picket or not."

Is that your position today?

A. It is not.

Q. It is not. When did you come to a different position than that?

A. (No answer.)

Q. Let me put this first——

A. Just a minute.

Q. This was your position in March, 1937, was it not?

A. That's what I testified to.

Q. Yes. Now, you have changed your position since then?

A. (After examining transcript of testimony.) Yes, that's right, whether they will picket or not; if there is no strike, I figure there is no need of pickets.

Q. And then you were asked further: "Well, you come to that conclusion depending on whether you decide there is a strike or not," and you answered, "Certainly." That was your position in March, 1937. Is it still your position?

A. It is still my position today.

Q. And then you were asked, "Then you do decide whether there is a strike or not, don't you?"

A. I don't decide——

Q. And you answered—you answered, "Yes, sir."

Now, do you now take a different position than you did in March, 1937?

A. Well, if there is a strike I don't decide whether it is a strike or not. If them people have gone out on strike, it

certainly is a strike. I can't say, if they are out on strike, it isn't a strike when it is. That is my position. If it is a strike, it is a strike; if it is not, it is not. And if it is a strike, they have got a perfect right to picket.

Q. Commissioner, you did testify, the question was asked, "A strike is on is a matter for the police to decide, is that right?" And your answer was, "Just a minute. It is a strike where there is a question about whether it is a strike or not."

Next question: "Well, whether there is a question about it or not is decided by the police department, is that right?"

A. It is not.

Q. You answered, "No, we don't decide if there is a strike or not. We decide whether they can picket or not.

"Q. Well, you come to that conclusion depending on whether you decide whether there is a strike or not?"

Your answer was, "Certainly."

When did you change your position?

A. That I can't say.

MR. HAMILL: I object to that.

A. (Continuing.) —I am giving you——

MR. ERNST: He can't say. He has answered it.

A. (Continuing.) —you my opinion today, how I feel about it.

Q. Perfectly all right. Now, what is your position today in respect to the right to picket?

A. If there is a strike they got a perfect right to picket: I believe in living up to the law and I do to the best of my ability concerning strikes.

MR. HAMILL: Now, right at that point I wish to address the Court. Your Honor will know, of course, and your Honor will take judicial notice of the fact that at that time there was no decision by our Court of

Errors and Appeals, but since then there is a decision by our Court of Errors and Appeals holding that where there is no strike there can be no picketing, and that is the law today.

THE COURT: I don't want to try to interpret the decisions of the Court of Appeals, because I have only read this one in the newspapers. Didn't that have to do with secondary boycott?

MR. HAMILL: No, I mean the decision of the Court of Errors and Appeals.

THE COURT: On secondary boycotting?

MR. HAMILL: I am not talking about this very recent one of Vice-Chancellor Egan.

THE COURT: No, I mean——

MR. HAMILL: There was one before that. Suppose we get it for the Court; then we won't be speculating about it. I will have those decisions, if not this afternoon I will have them tomorrow morning.

THE COURT: If you will just give me the reference, I mean; I know the Egan one.

MR. HAMILL: But after that a decision came out.

Q. Commissioner, do you decide in the case of picketing in a strike whether the union involved is a bona fide union or not?

A. I do not; as long as it is a union they got a perfect right to picket; they don't have to be union or anything else. If the factory decides to go out on strike I can't stop them. I don't decide it. That is their troubles, not mine. My trouble is to protect life and property.

Q. Now, in March, 1937, you had another position, didn't you? I want to refresh your recollection from this question and answer:

"Q. You decide whether the union involved is a bona fide union, is that right?

"A. I do."

Now, I ask if you have changed your position since March, 1937, and just when did you change your position?

MR. HAMILL: I object and for this reason, that the charges in the bill are such that it does not matter what the opinion of the Director was in the past or whether he has changed it or not, but what is the policy and what was the policy of the City of Jersey City with regard to picketing at the time this bill was filed.

MR. ERNST: Your Honor please, I would like to know when he has changed his position. He may have changed it before the bill was filed or after.

Q. I will ask you this to help Mr. Hamill out. Did you change your position——

MR. HAMILL: Don't help me out at all, help yourself.

Q. (Continuing.) —in regard to whether you had to find out if a union is bona fide or not?

A. That is my opinion today. I am giving you my opinion today.

Q. Was that your opinion at the time that the bill was filed? I will give you the date in a minute.

MR. HAMILL: I think it was in January.

Q. In January; was that your opinion, in January?

A. Well, I couldn't state when it was my opinion—in January—it is my opinion today. That's the way I feel about it today.

Q. Did you get an opinion from counsel which aided you in changing your opinion?

A. No, I used my own judgment on it.

Q. And you no longer consider the question as to whether or not a union is a bona fide union or not?

A. No, I do not.

Q. And you do not consider now whether the people commit a crime, I would clasify them as undesirables.

A. I do at all times with undesirables; I haven't changed my opinion a bit on undesirables.

Q. And if they are undesirable you have them put out of Jersey City, is that so?

A. Where they have committed a crime or are about to commit a crime, I would classify them as undesirable.

Q. You permit peaceful picketing if you determine there is a strike, but you don't interfere with them?

A. I don't interfere with peaceful picketing.

Q. At times you take sides one way or the other if you come to the conclusion that there is no strike?

A. I don't come to any conclusion. If I can straighten the strike out between the workers and the employers I am only too glad to do it if I am asked to sit in conference with them.

Q. I want to refresh your recollection from the record at page 407, question and answer as follows, and I want to know if that is your present position.

A. That's the way I feel about it today. I am giving you how I feel about it today.

Q. But I just want to get this: "As I understand" the question is "the only time you take sides one way or the other is if you come to the conclusion there is no strike?

"A. If there is no strike what is the picketing for, what is the crowd of busybodies injecting themselves into it for?"

A. I gave you my opinion in my statement that I just made in my answer and that's the way I feel about it today.

Q. And do you feel also about it today as indicated in this question and answer?

A. No, I have changed my opinion about it.

Q. Have you ever heard of a place being picketed in order that workers may be persuaded to unionize and join the union?

MR. HERSHENSTEIN: I object, did he ever hear of a place—absolutely no relevancy or materiality in this case.

THE COURT: Yes, I think so.

Q. Would you permit picketing peacefully where workers or others want to persuade people in a plant to unionize and join the union?

A. I would not.

Q. You would not. And you would not do so even if the plant were the largest plant in Jersey City?

MR. HERSHENSTEIN: Now, if your Honor please, that presupposes——

A. Well, I will give you my answer, my reason for it, if you want to know.

MR. HERSHENSTEIN: Wait a minute.

A. (Continuing.) But if Mr. Hershenstein——

Q. I want to know, of course. You are my witness. Go ahead.

THE COURT: Go ahead.

A. Picketing a plant where there isn't any labor trouble is liable to cause riot and bloodshed, and as a precaution for the safety of the people of Jersey City, I would refuse them picketing there.

Q. Are you familiar with the National Relations Labor Act passed by Congress?

A. I am not.

Q. Have you ever read it?

A. I have not.

Q. Have you ever been advised in respect to the rights of people to picket under that act?

A. I have not. I am giving you my honest opinion, Counselor, what I would do.

Q. I know that.

A. If I am wrong, I will abide by the rulings of the Court.

Q. But your present position is that no matter the nature of the business, whether it is a bus line or a can company or a big factory or a small one, you will not allow picketing for the purpose of persuading the workers to join a union?

MR. HERSHENSTEIN: Pardon me. You mean where there is no strike?

MR. ERNST: Where there is no strike.

A. That's my opinion, what I gave you, Counselor.

Q. And that's your position?

A. That's the way I feel. I might be wrong.

Q. That's right.

A. I am giving you my opinion, what I would do until I am otherwise stopped by the Court.

THE COURT: Mr. Hamill, I want to be fair after all to the Commissioner, who is not a lawyer, has he had any legal advice from your department on this legal question?

MR. HAMILL: On the National Labor Act? No, sir, he has not.

THE COURT: The question put by Mr. Ernst?

MR. HAMILL: No, he has not.

Q. Did you ever request an opinion from the corporation counsel on the subject?

A. I did not.

MR. HERSHENSTEIN: Now, if your Honor please, supposing the matter hasn't been presented in a way where such a request was necessary?

A. I never had a case like that presented to me. If I did I would consult the corporation counsel on it. I am giving you my opinion from what I feel and how I feel about it.

MR. HAMILL: You see, he is not referring to any specific instance. He is asking him has he obtained knowledge or an opinion regarding a certain act.

THE COURT: I asked him. I asked that.

MR. HAMILL: Yes.

THE COURT: I thought it was fair to the Commissioner who is not a lawyer. That is the reason I asked him.

MR. HAMILL: Yes.

Q. Do you recall a meeting of the City Commission of Jersey City some time in the early part of 1937, at which the matter was discussed by you with the Commissioners relating specifically to the rights of piekets?

A. Offhand, no, I don't.

Q. I would like to refresh your recollection:

"Yes, with the Seamens we didn't allow them to picket.

"Why not?

"A. It wasn't a bona fide union. It wasn't a bona fide strike.

"Q. Was there any other reason?

"A. That's all.

"Q. And you have had trouble with this same union, the Furniture Workers Union, before, haven't you?

"A. We did.

"Q. And the same people were involved in it," et cetera.

"A. They were.

"Q. Now, is the City Commission of Jersey City in any way, or has it ever in any way, opposed to the American Federation of Labor?

"A. They have not.

"Q. To your knowledge did the representative of the American Federation of Labor appear before the City Commission of Jersey City while you were a member of that Commission?

"A. I don't quite get that question, Counsellor.

"Q. Did a representative of the American Federation of Labor appear before the City Commission of Jersey City while you were one of the Commissioners.

"A. They did.

"Q. And what was the purpose of that?

"A. Picketing."

Does that refresh your recollection, this testimony you gave about the American Federation of Labor appearing before the Commission in respect to the rights of picketing?

A. I think there was a delegation there one day, and to tell you the truth now, offhand I couldn't tell you what it was, whether it was picketing or what it was.

THE COURT: Commissioner, when you have your meetings of the City Commission, is there a stenographer present?

THE WITNESS: There is.

THE COURT: Probably that would be——

THE WITNESS: That could be verified there.

THE COURT: Yes.

THE WITNESS: I don't remember that. I know that there was——

THE COURT: Have you got the date, Mr. Ernst?

THE WITNESS: But what transpired there now I don't remember.

THE COURT: Have you got the date, Mr. Ernst?

MR. ERNST: I will get it this way:

"Commissioner, would you permit picketing today of what are called runaway shops?" If you don't know what they mean I will define them.

MR. HERSHENSTEIN: I object, if your Honor please, because that is not material or evidential to this issue. There is no evidence there were runaway shops. There is no issue in this case as to runaway shops and the testimony therefore is entirely immaterial.

THE COURT: There was evidence of one runaway shop. I don't know whether runaway is the right word.

MR. HERSHENSTEIN: I don't know.

THE COURT: There was evidence of one.

MR. ERNST: It is in the record.

THE COURT: It is in the record, in this case.

MR. ERNST: I will tell the witness frankly what I want to know. He says he won't allow picketing when there is no strike. So I want to find out whether if a shop runs out of another town and comes into Jersey City and there is no strike, whether he will or will not allow picketing in that situation.

MR. HERSHENSTEIN: Now, what difference does that make?

MR. ERNST: That is the situation as to which we have testimony in the record already.

THE COURT: That is correct, Mr. Hershenstein. There was some testimony as to one.

MR. ERNST: And we will tie it all up later.

Q. What is your answer, Mr. Casey?

MR. HAMILL: What difference——

MR. ERNST: Let's have one counsel, please.

MR. HAMILL: With the permission of the Court, may I say this?

THE COURT: Yes, go ahead.

MR. HAMILL: Until it is a matter of record that there are runaway shops here, the opinion isn't relevant.

THE COURT: That's true, but there was one, Mr. Hamill.

MR. HAMILL: Well, assuming that there was; ask him what he did in a particular case. He said that if there is no strike anywhere, there can be no picketing.

MR. ERNST: I want to know——

MR. HAMILL: That applies to everything.

THE COURT: Well, if the answer is inclusive, all right.

MR. ERNST: Will you take Mr. Hamill's answer, Mr. Witness?

MR. HAMILL: That if there is no strike—We take this stand, since you have invited me to give it; that we don't know whether the shop is a runaway shop or not. That is a matter which occurred somewhere else. All that comes under our observation and judgment is that there is a certain industry in the city. Its past may have been good, its past may have been bad. We are bound by the law as expressed by the highest court, the Court of Errors and Appeals in this case, to permit picketing only where there is an actual strike. We sympathize deeply with the man who may be victimized by this runaway shop, but we are powerless.

THE COURT: Well, I don't want to ask you too many questions of law, but has the Court of Appeals ever passed on the runaway shop question?

MR. HAMILL: No.

THE COURT: The Court of Appeals of New York has, I think, but I don't——

MR. ERNST: If your Honor please, there is also such a thing as a federal system of jurisprudence.

MR. HAMILL: Yes, and where does it apply to any particular case? I can say to this case; because I don't know what you are driving at, if you know yourself, in any definite way.

MR. ERNST: I take it that it is an objection to my question. I will ask for a ruling from the Court.

THE COURT: You may answer.

MR. ERNST: Is that an objection or isn't it?

MR. HAMILL: Well, it certainly isn't a commendation or an approval. Yes, it is an objection.

THE COURT: You may answer.

Q. Go ahead.

A. We have had shops that they claimed were runaway shops; picketing was allowed there.

Q. Even if there was no strike?

A. We have had——

Q. Yes or no—even if there was no strike?

A. Yes, we did allow picketing, runaway shops, where they claimed, the men, they were out on strike in New York, they run away and they come over here and were allowed picketing, even recently.

Q. And do you allow solicitation—what?

A. Recently I am talking about.

Q. Do you allow solicitation where there is no strike, that is, solicitation of membership to a union?

A. I got no objections to soliciting in an orderly manner.

Q. Do you permit the carrying of leaflets on a picket line?

A. I do now.

Q. You do not?

A. I do now.

Q. You do now. Fine.

A. I don't stop the handing out of pamphlets.

Q. Do you permit peaceful pickets to carry the leaflet up in the air instead of handing it out?

A. We have a city ordinance prohibiting the carrying of signs.

Q. Do you permit pickets——

THE COURT: Have you got that? Is that in the bill, Mr. Hamill?

MR. HAMILL: I don't know whether that is included.

MR. ERNST: No, we have not got it.

MR. HAMILL: But there is such an ordinance. I haven't a copy of it.

MR. ERNST: I would like the witness to answer.

MR. HAMILL: I would not say prohibit the carrying of signs, regulate the carrying of signs. I don't recall all of its provisions now but we will get that.

THE COURT: I think in fairness to the Commissioner, after all he is enforce the city ordinances, and if they are wrong someone else will have to do something about that.

MR. HAMILL: I think so, too.

Q. I would like to ask the Commissioner: Do you permit the carrying of placards on peaceful picket lines?

A. I do not.

Q. You do not. Did you ever get advice of counsel on that subject?

A. I abide by the city ordinance.

Q. That is, you yourself read the city ordinance and came to the conclusion that no placards could be carried by pickets on picket lines?

A. I, as a member of the Commission, live up to the laws of the state and city ordinances of the city to the best of my ability.

THE COURT: How old is that ordinance, Commissioner, do you remember? We will have it here.

THE WITNESS: I guess it is a year old, maybe more. I couldn't tell you definitely, your Honor.

Q. Do you recall whether under that law that you live up to permits must be granted for the carrying of placards on picket lines?

A. You cannot issue a permit in violation of an ordinance, it don't give you that power.

Q. And as you operate——

A. And there hasn't been any permits issued.

Q. So I take it, as you construe your powers under that ordinance you may not grant a permit to carry placards on a picket line?

A. I couldn't if I wanted to.

Q. And it is an unlawful act to carry a placard on a picket line?

A. It is.

MR. HAMILL: I object.

THE COURT: Under the ordinance.

MR. HAMILL: Well, the Court of Chancery in this state has on several occasions regulated whether signs could be carried or not, and in a number of cases refused to allow the carrying of signs.

THE COURT: Don't you refer to cases where there was personal abuse on the sign?

MR. ERNST: No, your Honor.

THE COURT: I mean, Mr. Hamill, those Chancery cases.

MR. HAMILL: Yes, or where they would be provocative.

THE COURT: That is what I mean.

MR. HAMILL: And the Court of Chancery has taken notice of that. What I want to call attention to is he is getting in pretty deep with a lay witness, asking him to lay down rules of law, and I hope the Court will take notice of that fact.

MR. ERNST: Your Honor please, my purpose is to the contrary. My purpose is not that I hope to get rules of law but to prove that he is acting in violation of the laws.

Q. Now, do you allow placards to be carried then on picket lines?

A. I don't allow any placards to be carried at any time. That goes for strikes, business houses or anywhere that they should be carried.

Q. How about parades, Mr. Commissioner?

MR. HEERSHENSTEIN: You mean labor disputes?

Q. I said how about parades, do you allow placards in parades?

A. I do.

Q. You do?

A. On parades, yes.

Q. And you do that because the ordinance in your judgment gives you the power to make a distinction between a parade and a picket line?

A. It does, I think so. I may be wrong but that is what I think.

Q. And you have never consulted counsel on that either?

A. No, I haven't; if it is wrong they will remedy it.

Q. But all parades have the right, in your opinion, to carry placards?

A. I never stopped it.

Q. You would have stopped it if it had been in violation of the law as you see it?

A. If I got an opinion on it, yes.

Q. In the absence of getting an opinion, if you had come to the conclusion that it was a violation of law you would have stopped it, wouldn't you?

A. I wouldn't stop it without an opinion on that, that is a very technical question. That is interfering with societies which I think I shouldn't interfere with, law abiding citizens I will have no trouble.

Q. And Mr. Commissioner, you do interfere with other societies known as trade unions in the carrying of placards, don't you?

A. I do, yes.

Q. And you do that without an opinion of counsel?

A. I do, yes.

Q. And you make no distinction as to what the placard says in the case of a strike?

A. No, I don't.

Q. A simple placard saying "We are on strike" could not be carried, is that right?

A. No.

Q. In Jersey City, Mr. Commissioner, who decides with respect to escorting people out of the city whether the people are undesirable, does the mayor decide it?

A. The mayor has nothing to do with it.

MR. HERSHENSTEIN: Wait a minute.

THE COURT: The answer is no.

Q. Does the commissioner of public safety decide it?

A. It comes under the jurisdiction of the director of public safety; it is a perfectly police matter under the direction of the chief of police, if he is there, or the next ranking officer.

Q. Now, do you at times decide to escort people out of the community if you think you as commissioner of public safety can get along better with him out of the community, and if you think he is going to cause trouble in Jersey City?

A. Yes, as an undesirable, yes.

Q. Do you have the power in your opinion to keep these undesirables from entering into Jersey City as well as escorting them out?

MR. HAMILL: Right there I want to put in this: "Undesirable" must be used in the sense the witness said, namely, those who are either committing unlawful acts or that he knows are going to commit unlawful acts.

THE COURT: I don't know how anyone would know what someone is going to do in the future.

MR. HAMILL: Suppose he announced in the newspapers he was going to come over to do an unlawful act?

THE COURT: Declare his intention.

MR. HAMILL: Declare his intention. In other words, must you wait until the unlawful act is committed?

(Question repeated by the reporter.)

A. I think that I am justified in doing it for the protection of the city; that is my opinion.

Q. Now, as to the circumstances under which you believe it is your duty to keep people out or put them out, may I refresh your recollection that you testified in the record to which we have been referring at page 415 as follows:

"Q. Commissioner Casey, who decides whether people are undesirable in your city, does the mayor decide that?

"A. The mayor does not.

"Q. Does the commissioner of public safety?

"A. At times, yes."

Then you proceed to say the following:

"A. If we decide we can get along better with him out of the community and he is going to cause trouble for us we keep him out, if he don't belong there."

Is that your position today?

A. Yes, it is.

Q. You permit placards to be carried in parades, I understand?

A. Yes, sir; I never stop them.

Q. Do you permit placards to be carried in public assemblages where there are no parades and where there are to be no speakers?

A. I don't interfere with them.

Q. On the occasion of Norman Thomas' visit to Journal Square in Jersey City, were placards carried in the crowd?

A. I couldn't tell you, I wasn't there.

Q. Were you there the night that O'Connell was to come over?

A. Yes.

Q. Do you recall if there were placards carried?

A. There were.

Q. Do you recall what the placards said?

A. I don't know; they were carried in the parade.

Q. And in your opinion it makes no difference in your determination whether you permit placards or not whether the placards carry legends and statements that are libelous or not?

A. No, I don't bother about it.

Q. You don't consider what is printed on the placard?

A. I don't. Pay no attention to it.

Q. I want to clear up one other thing. The men on a picket line, if you permit the picket line, may hand out pieces of printed cardboard or paper saying "This factory is on strike?"

A. A pamphlet, yes, I have no objections to them living up to the rulings of the Supreme Court.

Q. Now, they can carry that legend "This factory is on strike" on cards, say ten by twenty, and hand them out those cards?

A. No, I don't allow it, not with a card; they can hand out a pamphlet.

Q. Now, let's get that distinction. They can hand out a pamphlet and not a card. You mean it must be printed on more than one piece of paper?

A. I mean they can hand out pamphlets but you are talking, I think, if I get you rightly, you are talking about sandwich signs, is that it?

Q. No, no, a man on a picket line can hand out a piece of paper, foolscap size, and have printed on it "This factory is on strike"?

A. No objections to it, that's right.

Q. No objections. Can he hand out now the same size but printed on cardboard, pieces of cardboard and hand them out where the cardboard has printed on it words saying "This factory is on strike"?

A. I got no objection, it is a pamphlet.

Q. But he cannot hold up that same piece of cardboard ten by twelve with the same words on it and walk up and down with it, is that right?

A. He has got a right to hand it out if he wants to, that is what the law says.

Q. He can't hold it up in the air?

A. No.

Q. May he have painted on the back of his shirt the phrase "This factory is on strike"?

A. Painted on there?

Q. Yes.

A. I never stop them from having painted signs on them. We see children going around every day with big signs painted on their backs, school boys and everything else. I got no objections to what he wants to paint on his clothes.

Q. So that men on a picket line may have on the backs of their coats or shirts written in ink or painted a statement saying "This factory is on strike"?

A. Got no objections to it.

Q. No objection. May they carry arm bands carrying a legend "This factory is on strike" or the name of their union?

A. Never stopped them.

Q. And you have no objection?

A. No objections; as long as it is a strike it is a strike.

Q. But if the words "This factory is on strike" are painted on a piece of paper that is held in the air instead of printed on a piece of linen which composes the coat, in your opinion it is illegal and must be stopped?

A. That is what I do.

Q. And on that you never got legal opinion?

A. I didn't even ask on it.

Q. Do you recall around December 6th having an interview with a reporter of the Federated Press, the reporter's name being Berlow, do you recall such interview?

A. No, I don't.

Q. Do you recall having seen a statement purporting to be made by you to Mr. Berlow of the Federated Press, which statement appeared, among other places, in the *Guild Reporter* of December 6, 1937?

A. I never saw it.

Q. You never saw it. Now I would like you to see if this will refresh your recollection. It was reported—and I am not sure whether you said it or not; I don't believe every word there is in print, but it was reported as follows:

"About the campaign to organize Jersey City, Casey, tall and muscular, roared 'Blood will run from the heads of C. I. O. organizers if they persist in harassing the industries of Jersey City.'" Did you ever say that?

A. Never in my life.

Q. You went on to say—see whether you said this:

"We will apply every law on the books to keep those strikers out of the town."

A. I did not.

Q. You did not. "Casey later said that policies for handling the labor situation were worked out in a conference he attended with Hague and Police Chief Walsh, and that ancient law books would be combed for statutes limiting union activity."

Did you ever say that?

A. I did not.

Q. I am asking you this, Commissioner, because we are going to have the man here; the reporter will be here, you see.

A. Well, I can't help that. I never made a statement of that kind, so I don't care what anybody says.

Q. You are supposed also to have said this:

"All known C. I. O. organizers entering Jersey City will be arrested."

Did you ever say that?

A. I never said that.

Q. You are also supposed to have said:

"Picketing by more than one or two persons would bring arrest for unlawful assembly."

A. I never said that.

Q. You never said that? Therefore this report, which ran in the *Guild Reporter*, through the wires of the Federated Press dispatch, is not to be believed, in your opinion?

A. It is not. It is ridiculous. I never made such a statement.

Q. Well, I am very happy, because I am checking it up with you, as to whether or not you did make them, before I am willing to believe it.

MR. ERNST: I would like to offer in evidence form of permit which has been identified as Exhibit P-14.

MR. HERSHENSTEIN: No objection.

(Received in evidence as Exhibit P-14.)

MR. ERNST: I would like to offer in evidence as one exhibit all of the correspondence produced by the witness, the defendant, indicating denials of permits, being all of the correspondence of all denials, together with certain correspondence relating to the granting of three permits, the three permits granted being those of the War Mothers to assemble outside of the Jersey City Armory, the Jersey City Veterans Law and Order Com-

mittee, for a parade May 7th, and the Citizens Veterans Law and Order Committee for a parade on June 6th, 1938.

I would like the record to indicate that the latter request for permit was signed by Hugh A. Kelly, chairman, Jersey City's Better Law and Order Committee.

MR. HERSHENSTEIN: No objection.

(Received in evidence as Exhibit P-31.)

MR. ERNST: Your witness.

MR. HAMILL: Now, if your Honor please, before this cross-examination begins, I wish to make two inquiries. I understand that counsel for the complainants wants Judge Glavin to return here and take the witness stand, and I would like to know when they want Judge Glavin here. Also I wish to announce that the Mayor has and will have important official business to attend to, and it will require his continuous attention; and will the Court——

THE COURT: When, when?

MR. HAMILL: ——tell us when we are to bring the Mayor here?

THE COURT: I can't tell you that.

MR. FRAZER: I have taken this all up with Mr. Hershenstein on several occasions. I don't know the need of this particular speech at this moment. The delay in the examination of Commissioner Casey has made it a little difficult.

MR. HERSHENSTEIN: I promise that Commissioner Casey's examination will not take more than an hour, if that; not more than an hour, if that.

MR. FRAZER: Then I would think that we would very likely be able to call the Mayor some time tomorrow.

MR. HAMILL: What time tomorrow? Morning or afternoon?

MR. FRAZER: I can't be pinned down to fifteen minutes.

MR. HAMILL: I beg your pardon?

MR. FRAZER: I will give you notice——

THE COURT: It was agreed that half an hour's notice would be given.

MR. HAMILL: Well, it may take an hour's notice.

THE COURT: Well, an hour's.

MR. HAMILL: I mean a half an hour in the broad sense, in the sense of a short space of time.

THE COURT: You didn't say about Judge Glavin, though, I don't think. When do you want him?

MR. HAMILL: What about Judge Glavin?

MR. ERNST: We will probably want Judge Glavin after Mayor Hague.

MR. HAMILL: All right.

MR. ERNST: But we will give you an hour's notice on that also.

MR. HAMILL: All right. Tomorrow is Judge Glavin's court day, Thursday. Will you need him tomorrow?

MR. FRAZER: We will try to accommodate the Judge's court engagements, of course. We don't want to be unnecessarily troublesome.

MR. HAMILL: I appreciate that, but Judge Glavin will arrange in case you want him. He is ready to forego his court appointments.

CROSS-EXAMINATION.

By MR. HERSHENSTEIN:

Q. Commissioner Casey, you referred in your testimony to some newspaper clippings, with regard to the statements of Mr. Carney and his threatened invasion of Jersey City.

A. I do.

Q. What dates were those statements published?

THE COURT: Well, let's have the newspapers.

A. The newspapers will tell me. I——

Q. Referring now to the *Newark Evening News*, it was published under date of November 23, 1937?

A. Right.

Q. Is that approximately the date upon which you saw the other publications?

A. That's about the time. If I see the paper I will tell you definitely.

Q. You were questioned, Commissioner, regarding the date upon which you saw the notices in the newspapers. You testified that the *Bergen Record* publication appeared on February 22d, and the *Newark News*, you thought, was the 29th, and Mr. Ernst said "of what month?" and you said, "February."

I think the *Newark News* on the 28th or 29th, the *Jersey Journal* on the 24th, and the *Hudson Dispatch* on the 23rd of February, 1937—quoting from page 545 of the record. Were you mistaken as to the month, Commissioner?

A. Yes, sir, I might have been mistaken on the month, and the paper——

Q. You referred to these publications then as having appeared in November.

A. That must be it, if it is in the paper. It was the invasion of Carney into Jersey City.

Q. Now then Mr. Ernst intimated to Mr. Hamill when he produced the newspaper or held it in his hand that Mr. Carney was misquoted. As a matter of fact, did Mr. Carney or his representatives appear in Jersey City on the

morning of the date stipulated in the newspaper reports that they would appear?

A. They did.

Q. And that was the incident, was it not, of November the 29th?

A. It was.

Q. Now, leaving that for just a minute, Commissioner, exhibit now marked P-31 contains all the applications made for permits which were denied or not acted upon, from December 1937, through May 1938?

A. They do. They are, rather; they are the applications that were denied.

Q. I beg your pardon.

A. They are the applications that were denied, or not answered.

Q. Now first referring to these applications, it is a fact, is it not, that in all there were ten applications made in those six months for permits to hold public meetings which were either denied or not acted upon?

A. Right.

Q. Now for a minute referring to those applications, in the order in which they were considered by counsel for the plaintiffs, let me call your attention, sir, to the applications. The first two, dated April 12th and April the 19th, were made by James Jeff Burkitt?

A. Right.

Q. And the applications were for a permit for a meeting to be held at Journal Square either on April 16, 1938 or April 23, 1938, isn't that a fact?

A. Right.

Q. Now the application of April 12, 1938 of James Burkitt was replied to by you and denied from the carbon copy attached to the application on what date?

A. The application was made on the 12th and it was denied on the fourteenth.

Q. That's two days after you received the application?

A. Yes, sir.

Q. And the application made by the same party, and of course they might be considered as one application, because it is the same person, was made on April the 19th, and I now show you a carbon copy attached to the application and ask you upon what date that was denied?

A. That was denied on April the 22d and the application was made on April the 19th.

Q. That's three days after?

A. Yes.

Q. Now I call your attention, Commissioner, to the statement in Burkitt's application of April the 19th. I am now reading from the last paragraph in which he says:

> "Regardless of whether you issue the permit or not I am going to attempt to hold a meeting there at 8:30 P. M. Saturday April 23, 1938."

That statement appears in his second application for a permit, is that so?

A. That is right.

Q. Now in denying these two permits, Commissioner, you took all the facts into consideration which you knew about Mr. Burkitt, and you used your best judgment and discretion in passing upon it, did you not?

A. I did.

Q. And you denied these two applications in accordance with your letter refusing the permit, because you were satisfied that the meetings would tend to result in disorder and disturbance?

A. Yes, sir.

Q. As a matter of fact, you had facts in your possession, did you not, which led you to that conclusion?

A. Yes, sir.

Q. Were there meetings in which Mr. Burkitt had participated which did result in disorder?

A. There have been.

Q. Now the second application in Exhibit P-31, the application of the Independent Speakers Association, dated May 9, 1938, that application was also for a permit, was it

not? I am referring to the last paragraph of the application for a permit to speak at Journal Square on either Thursday, May 19th or Friday, May 20. That is a fact?

A. Right.

Q. I now ask you to examine the carbon copy of your refusal of that permit and ask you on what date did you deny that permit?

A. I received it on May 9th and I denied it on May 10th.

Q. Pardon me?

A. I received it on May 9th——

Q. Yes.

A. And denied it on May the 10th.

Q. That is one day after you received it, is that correct?

A. Right.

Q. I now show you the third application made by the Socialist Labor Party bearing date May 23, 1938. Now, that application, you withheld judgment, did you not, because of the fact, in accordance with your carbon copy letter, you requested further information concerning that meeting?

A. Which one are you talking about now, counsel? There is two of them here.

Q. Pardon?

A. There is two of them here.

Q. Perhaps I may be wrong.

A. Which one do you mean?

Q. I am sorry. You denied the application, did you not?

A. Yes, I denied this application.

Q. I think, Commissioner, we ought to clear this situation up. Annexed to this Socialist Labor Party application you will find a memorandum written in longhand which bears the stamp of your office "Received May 3, 1938," does it not?

A. Yes.

Q. That application has annexed to it a carbon copy of your letter dated what date?

A. May the 4th.

Q. And the carbon copy of that letter indicates that you requested further information, does it not?

A. Yes.

Q. Now, what was the information you requested?

A. I asked him to "present your application in person, list the speakers who will address your meeting, also give me a list of your officers so I may investigate same."

Q. And you requested that information one day after you received the application, did you not?

A. Yes, sir.

Q. And isn't it a fact that it wasn't until May 23, 1938, that information came to you from the Socialist Labor Party pursuant to your request of May 4th, isn't that a fact?

A. Well, that is when I received that letter, on May 23d. I don't know what that one is without looking at it.

Q. And annexed to that letter was a statement of Nicol Gerold who claims to have interviewed you concerning this application, in which he states he appeared at your office on May 6th, that he presented an official page of the *Weekly People*, pointing specifically to Quinn Itinerary and other organizers on the road and explaining that they were traveling from place to place with no permanent address. You thereupon asked for a list of officers and he again showed you an official page of the *Weekly People*. That communication came to you under date of May 23d, is that correct?

A. Right.

Q. That application you did not act upon?

A. I didn't act upon it, no.

Q. Were you satisfied from the information—as a matter of fact, did a Mr. Gerold come to your office?

A. No.

Q. You don't know whether any such information was given to you?

A. I don't know, I couldn't say to be sure on it, whether he did come or not; I wouldn't say positive that he did come there. Maybe if I saw the man I could tell you.

Q. The next application was made by a Mr. William Tolman dated April 26, 1938, from your police report, is that information correct?

A. It is.

Q. When did you reply to that application?

A. April 27, 1938.

Q. One day after you received it, is that a fact? And you denied it because you, in your best judgment, determined that that meeting would result in disorder and disturbance?

A. Right.

Q. Now, as a matter of fact, Mr. Commissioner, didn't Mr. Tolman, after the receipt of your denial of a permit, write you a letter in which he accepted the denial of the permit because it would tend to create disorder and disturbance and say that he hoped that in the future those meetings may take place and they will not create violence and disturbance? I show you the letter of April 28, 1938.

MR. HERSHENSTEIN: That was taken right from your exhibit, that is part of their exhibit, if your Honor please.

Q. Isn't that a fact?

A. That's right.

Q. And in that letter of April 28, 1938, Mr. Tolman apologized for using ruled paper and says "Your two communications received and contents noted. I shall consider your denial as an admission that expectant disorder and disturbance would come from someone other than a Socialist. I will not attempt to hold the desired meeting at Journal Square until such times that we feel sure that the police department will be able to maintain order even as a gesture towards we Socialists who always voted for increases of their salary. Wishing you good health and the greatest of all blessings and looking forward to renewal of permits, I am, Very truly yours, William Kane Tolman."

MR. FRAZER: Is that ironic?

Q. Now, consider the next application.

THE COURT: We will consider it in ten minutes.

(Recess.)

(Following a short recess.)

Q. The next application, Commissioner, in the same exhibit, is from the Hudson County Committee for Labor Defense and Civil Rights. That bears the stamp of your office 1:20 P. M. May 24, 1938. The application itself is undated. Is not that a fact?

A. That is right.

Q. Will you look at the carbon copy annexed and tell me when you acted upon that application? What date?

A. On the 25th.

Q. The next day?

A. The next day.

Q. And in this refusal, Commissioner, you state, after reviewing the fact that this application contains the statement that—I quote now from the application—"We are specifically asking for Pershing Field as a place which will not interfere with the trade of our townspeople. As an organization composed of Hudson County groups we are solicitous of the business and welfare of Jersey City. The chairman of our organization is John Longo."

You state, do you not, that "You cannot be very solicitous about the business and welfare of Jersey City when you are endeavoring to hold a meeting which you know will create disorder and riot. Thousands of our citizens resent Congressman O'Connell's and Congressman Bernard's tour of the battlefields of Spain as the guests of the Communist Party and the use which they made of their official position by creating the impression upon the Red troops that all America was in sympathy with their cause. Our citizens resent this conduct as un-American. They also resent Mr. O'Connell fighting the cause of the Communists

who are directing the C. I. O. activities and those radicals who are seeking to invade Jersey City and destroy our property, our industries and business. Knowing that the C. I. O. has been prevented from gaining a foothold in Jersey City, Mr. O'Connell rallies to their aid by raising the cry of denial of free speech and by his every act is seeking to pave the way for the C. I. O. and their destructive forces entering our city. In order to gain publicity for himself he is again using his official position as Congressman merely as a camouflage and to dignify his parading as a champion of the rights of free speech.

"My investigation also disclosed that your Committee, of which John Longo is chairman, is a branch of the International Labor Defense, the National president of which is Vito Marcantonio, who was counsel for John Longo in a recent criminal court action. The International Labor Defense, I am informed, is part and parcel of a Communist society known as the 'Red Aid of Russia' which has established branches all over this country. These organizations always come to the defense of Reds, Radicals and Communists who violate the criminal laws of our country."

And therefore you state you deny this permit; are those the facts?

A. They are.

Q. And are those the facts upon which you based your judgment that this permit should be denied?

MR. ERNST: If your Honor please, I object to the question because the question implies that those are facts and the most that can be said is that those are the statements that this witness thought to be facts.

MR. HERSHENSTEIN: I will change my question.

Q. The statements contained in this communication are statements which you thought and believed to be true?

A. That's right.

Q. And they are the facts upon which you based your refusal of a permit?

MR. ERNST: No, no, and your belief in those statements, whether true or not, was the basis of your determination.

MR. HERSHENSTEIN: Perhaps I will change it again.

Q. Are these the facts upon which you state you based your refusal?

A. That's right, they are.

Q. The next application, Mr. Commissioner, is an application of May 3, 1938, made by the Catholic Worker of 115 Mott Street, New York, and the person who signs the communication is William M. Callahan, who describes himself as managing editor. I ask you to refer to the carbon copy annexed to this application and state to us please when you acted upon it.

A. I received it on May the 3d and answered it on May the 4th.

Q. The very next day?

A. Yes.

Q. And in your communication to the Catholic Worker you asked for further information before you could pass upon this application?

A. Right.

Q. Did you receive the further information which you sought?

A. If I received it the letter is there.

Q. And if it isn't there you have not received it?

A. I haven't received anything from them.

Q. And is that the reason, Mr. Commissioner, that this application was not acted upon?

A. That's right.

Q. The next application is the application of the Hudson County Committee for Labor Defense and Civil Rights. There are two applications by this same organization, one bearing date May 3, 1938, which requests a mass meeting at Journal Square for the evening of May 5th at eight o'clock, and the other an application of May 5th requesting another meeting for another date, changed to May 7,

1938. I ask you to refer first to the original application bearing date May 3, 1938, and ask you from the carbon copy annexed to that application and now in evidence on what date you replied to that application.

A. I received it on May the 4th and I answered it on May the 6th.

Q. And in your letter of May 6th you write: "The speakers whom you list, namely, Congressman Jerry O'Connell and John T. Bernard, are personally obnoxious to the great majority of our citizens because of their Communistic endeavors. There has been considerable agitation by veteran and labor organization, War Mothers and Gold Star Mothers and other civic groups in our city, as a result of their announcement in the press that they will appear here next week."

Were these the facts upon which you based your discretionary powers to refuse a permit?

A. They were.

Q. Now, just going back to the Hudson County Committee for Labor Defense application, I think by reference to your letter of May 4, 1938, you are treating this application as one, and to refresh your recollection I will now read to you from your carbon copy of letter dated on this same date as the denial of the permit on May 4, 1938, in which you state:

> "I am in receipt of your application for a permit for a meeting which you state is to be held Saturday, May 5th, at eight o'clock. I do not understand whether you mean Saturday evening or May 5th. Saturday is the seventh. However, before granting you your permit, in order to make my investigation it will be necessary for you to send me promptly a list of the speakers who will address this meeting and the names and addresses of the officers of your association."

Now, this letter of May 5, 1938 was in reply to your letter of May 4th, in which she corrects the date, Miss Frances McKee, as being May 7th.

A. That is right.

Q. You treat that as one application, however?

A. I do. That's the way I treated it.

Q. Now, Mr. Commissioner, that disposes of all of the applications which were filed with you and which concern denied or action withheld, except the two applications, one by Mr. Spaulding Frazer on behalf of the CIO, the application and correspondence being marked as Exhibit P-13, and the application made by Samuel L. Rothbard on behalf of the Civil Liberties Union, which is marked Exhibit P-12?

A. That is right.

Q. Now, taking up these two, in order that we may complete the applications, I refer first to Exhibit P-13, the application by Mr. Frazer on behalf of the CIO. That application bears date from the exhibit December 23, 1937, does it not?

A. It does; December the 23d.

Q. I said that, didn't I?

A. Was it? I thought you said December 27th.

Q. December 23, 1937. And in that application Mr. Frazer writes that:

> "The Hudson County Organizing Committee of the C. I. O. desires to hold an open-air meeting in Jersey City, at any public place within a reasonable distance from the center of the city which you may assign for such meeting."
>
> "The purpose"—I am now skipping—"the purpose of the meeting, to which the public will be invited, is to petition the Board of Commissioners of Jersey City to modify Jersey City's leaflet distribution ordinance and its ordinance on public meetings, and to take appropriate action against intimidation by certain officers of your city of owners of halls who, but for the fear of incurring official hostility, would be willing to rent their premises for meetings of the Hudson County Organizing Committee.

"The permit is requested for the evenings, between eight and ten p. m., of either Wednesday, December 29th, or Thursday December 30th, 1937.

"The meeting will be addressed by Congressman Jerry O'Connell, Roger N. Baldwin, William J. Carney, Al Barkin, Sam Macri, and John Kiesler."

Will you please state on what date did you reply to Mr. Frazer with regard to that application?

A. I received it on December the 23d and I answered it on December the 27th.

Q. And on December the 27th you write that you must "make investigation of all the facts and circumstances" before deciding whether it shall be proper for you to refuse or to grant the permit; isn't that a fact?

A. Right.

MR. ERNST: If the Court please, would Mr. Hershenstein mind reading, so that we don't get it out of its context, the last paragraph of the Spaulding Frazer letter?

MR. HERSHENSTEIN: I will be very glad to do so.

MR. ERNST: Of December 23? I don't think he omitted to read it intentionally, but it all goes together.

MR. HERSHENSTEIN: Mr. Frazer, or Mr. Ernst, rather, wants me to read further that Mr. Frazer in his letter states in the last paragraph:

"I would appreciate receiving the permit by return mail, since, as you understand, it will require several days' advance notice properly to complete arrangements for the meeting."

Now, our ordinance, if your Honor please, that is a matter of record, provides that you must receive at least seventy-two hours' notice.

THE WITNESS: Three days, I think it says.

Q. Three days, so that you could not issue it promptly anyhow, could you, Commissioner?

A. No, I didn't.

Q. Especially when you wanted to undertake an investigation. And in your letter of December 27th, you state that you desire to undertake an investigation, do you not?

A. I do.

Q. And three days after, on December the 20th, 1937, did you reply to Mr. Frazer and act upon either the granting or refusal of this permit?

MR. ERNST: I believe you said the wrong date, Mr. Hershenstein.

MR. FRAZER: December 30th, I think.

THE WITNESS: December 30th.

MR. HERSHENSTEIN: Did I say——

MR. FRAZER: The 20th.

MR. HERSHENSTEIN: I beg your pardon.

A. Yes, I did. I answered it.

Q. And in your letter of refusal you set out, do you not, the facts upon which you based your statement as to why this permit should or should not be granted?

A. I did.

Q. And in your letter of December 30th you say that:

"On receipt of your letter, I sent you a communication dated December 27, 1937, in which I informed you that I would, as required by ordinance, make prompt investigation of all the facts and circumstances pertinent to your application before deciding whether to grant or refuse the issuance of the permit requested. On the same day, December 27, 1937, I received a communication written on behalf of certain veterans' organizations of Jersey City protesting against the granting of a permit to Roger N. Baldwin or to any members

of group he represents, to hold a meeting. The letter demanded that I withhold action on your application. I attach a copy of the veterans' letter to this communication and"

You state further:

"On the evening of December 28, 1937, a great mass meeting was held in the Armory at Jersey City, attended by over 3000 persons, all of whom were veterans. At that meeting, a resolution of opposition was passed against the granting of a permit. Violent disorder was threatened on the part of the veterans in case the meeting was held. Announcements were made from the floor—and these announcements had the approval of the meeting—that if I should refuse to honor the veterans' protest and grant a permit for the meeting, the veterans would take the matter into their own hands and see to it that the meeting would be broken up. I refer you to copies of the local papers of Jersey City, which give an account of this meeting. I also enclose a copy of the resolution passed by the veterans at the meeting.

"The Chamber of Commerce, representing the business interest of Jersey City, have gone on record against the granting of this permit.

"The Central Labor body of Hudson County has gone on record against the granting of this permit.

"Other bodies of citizens have opposed it, and individuals of influence in the community have protested to me against the holding of the meeting. Other facts and circumstances pertinent to your meeting, in addition to those herein called to your attention, convince me that the granting of the permit you request would lead to riots, disturbances and disorderly assemblage."

MR. ERNST: If your Honor please, it seems to me that there is no validity in cross-examination in reading

into the record documents which have already been introduced into evidence. They are fully in evidence. I don't see how they can be cross-examined upon as to the material in them.

MR. HERSHENSTEIN: I took a leaf out of Mr. Ernst's book, your Honor please. He has read line after line into evidence in his direct examination.

THE COURT: Commissioner Casey already read that letter in. I have no objection to hearing it twice, but he has already read it.

MR. HERSHENSTEIN: For the sake of continuity I think it should be permitted.

MR. ERNST: It seemed to me on cross-examination to reread what has been put in on direct was not proper.

MR. HERSHENSTEIN: I will try to curb that, if I can, but I think it is important, Mr. Ernst.

Q. Now, in refusing this permit——

MR. ERNST: May I ask what the purpose of the cross-examination is in respect to what you have read, that is, what are you going to break this witness down on, if that is the phrase?

MR. HERSHENSTEIN: I don't think I have to answer that question. He was asked questions on direct examination. I have a right to bring out the facts which I deem Mr. Ernst did not bring out on the direct examination.

THE COURT: I think, as a matter of fact, not to be technical about it, Mr. Hershenstein, you would have to make him your own witness for that purpose. I don't think you will deny that this witness told the truth. I thought he did. And, of course, the basis of cross-examination is to try to shake a witness, as I have always thought.

MR. HAMILL: May I say something?

MR. ERNST: Let's have one counsel, please.

MR. HAMILL: No, may I say something to the Court? The Court will rule on that. May I say something to the Court about this witness? This witness has been put on by the other side, not for the purpose of upholding him but for the purpose of breaking him down. Now the situation is reversed, he is our witness, he is one of the defendants whom we are defending, and it is not a question of our breaking him down; the real question is to have him explain, and if you want to use the term "to build him up." Now, isn't that the situation? He is not put up by the other side for the purpose of vouching for him but for the purpose of cross-examining him. In other words, what has gone on here has been a cross-examination and now a direct instead of what usually happens, a direct and then a cross-examination.

MR. ERNST: If your Honor please——

MR. HAMILL: This witness is now on direct examination; he is a defendant now defending.

THE COURT: Well, are there any facts that this witness testified to that you dispute?

MR. HAMILL: Well, counsel is explaining anything that he did say. I will say one thing in order to answer that question of your Honor's——

THE COURT: I am not trying to cut you down in your defense at all.

MR. HAMILL: No, I know you are not. Undesirables—persons undesirable, that has gone all through the record as if undesirable were used in the sense of distasteful. This witness has said "undesirable" means actually lawless or those who have expressed a

determination to be lawless and those he would deal with. Now, questions of that character, which were questions in the nature of cross-examination, ought to be explained by the witness on this which is really his direct examination, although very technically his cross-examination.

THE COURT: Mr. Hamill, I don't want to be technical at all. I have objected, for instance, to your strict application of the hearsay rule. I think I am rather an untechnical person. I have been criticised for being untechnical, so that I don't want to be technical and fuss around with rules that don't seem to me, at least in a case of this character where there is no jury, of much utility. I am inclined to give great latitude.

MR. HAMILL: I know you are. Then why all this objection about reading it again into the record?

THE COURT: Because we have had it once.

MR. HERSHENSTEIN: That has never been read in as I have read it in.

MR. HAMILL: If counsel thinks it ought to be reread he ought to be allowed to reread it.

MR. ERNST: May I betwixt Gallagher and Shean state my position?

MR. HAMILL: No, you are betwixt Scylla and Charybdis and you are in a bad way.

MR. ERNST: I am flattered by the army of adversaries. May I just state my simple position?

MR. HAMILL: It isn't because you are complaisant but because you are a little pestiferous.

MR. ERNST: Are you finished, Mr. Hamill?

MR. HAMILL: Oh, yes, I wouldn't interrupt you for the world.

MR. ERNST: May I state it seemed to me that there would be no end of Mr. Casey on the stand if there was to be read into the record the correspondence in these cases. We are bound by the correspondence, your Honor, we introduced it; we bound ourselves by this witness of ours, by his testimony, that what he said in those letters was the basis of his judgment, whether they were true statements or not. That was the basis and all I wanted to do was avoid the necessity of having to read again, on my part, the balance of the correspondence that Mr. Hershenstein won't read.

MR. HERSHENSTEIN: May I say this to your Honor——

THE COURT: We don't want to spend the time reading it all, do we?

MR. ERNST: Yes, that is what he wants to do.

MR. HERSHENSTEIN: May I say this: Mr. Ernst has, in his direct examination, over and over again impugned the honesty and the honest determination of this man who was charged with the duty of passing upon these permits.

THE COURT: I don't think so. I disagree with you. I don't think anyone has impugned Commissioner Casey's veracity. I haven't heard it and I have paid close attention. They may have disagreed with his policy but they certainly have not impugned his veracity.

MR. HERSHENSTEIN: I don't mean that, sir, but Mr. Ernst has said that the mere fact that a commissioner denied a permit by fomenting these meetings and intimated, if your Honor please, that Mr. Casey and others have brought about these meetings, and thereby charging him directly with giving a decision in these matters, not based upon actual facts but as a mere whim, I say we have a right to show the facts upon which the Com-

missioner did base his determination, and those facts are set out in the correspondence.

THE COURT: Well, if we have to have it all read we will have to have it all read. I think it is a great waste of time.

MR. ERNST: My point is does he mean, your Honor, facts that are not in evidence or does he mean self-serving declarations contained in letters which were introduced? Now, if there are additional facts that are not in the letter we would like to get them.

MR. HERSHENSTEIN: We will show additional facts.

MR. ERNST: We asked for protests and it took days to get them.

MR. HERSHENSTEIN: Your Honor, I won't be guilty of clogging the record or reading into the record——

THE COURT: No, but one fact on which Commissioner Casey based his decision would seem to require depositions in Spain.

MR. HERSHENSTEIN: I shall give you those facts in a minute. I have a right to show the basis of his determination and if the facts he states are the true facts, he has a right to state them.

THE COURT: No, but did you hear that, Mr. Hershenstein, one of the facts on which Commissioner Casey based his opinion—and I am not criticising him for basing it—seemed to require if we were to prove the ultimate fact depositions in Spain?

MR. HERSHENSTEIN: I am going to come to that in a minute.

Q. Now, Commissioner, referring to the last application—and that is the application by the Civil Liberties Union, Exhibit P-12, that is, the application made by Mr.

Rothbard under date of December 17th—in that application he asks for a meeting on one of four days, he asks for a meeting in the Plaza in front of the Court House located in Jersey City. Have you any jurisdiction over the Plaza in front of the Court House?

A. I have not.

Q. That is county property?

A. That is in the Board of Freeholders.

Q. When did you reply to that application? I show you the carbon copy.

A. December the 20th.

Q. That is three days after the application was received?

A. Yes.

Q. And in which communication you advised that you were making an examination?

A. That's right.

Q. On December the 22d you received a letter of correction, did you not, from Mr. Rothbard's office in which he states that he inadvertently mentioned the year December, 1938, instead of December, 1937?

A. That's right.

Q. You also received from Mr. Rothbard a letter of December the 20th in which he states the speakers who will speak, who are to speak at this meeting, and quoting from the letter Mr. Rothbard writes: "more particularly also the speakers will be Congressman Maverick, Congressman Jerry O'Connell, Congressman Allen and Morris L. Ernst." That is a fact, is it?

A. That's right.

Q. You replied to the letter, did you not, under date of December 22?

A. I did.

Q. Two days after. On December the 28th you received another letter from Mr. Rothbard in which he requests, in view of the fact that the last date for the meeting had gone by, the right to have a meeting during the week

of January 3, 1938, at any place you will designate agreeable to his client?

A. That's right.

Q. Was there any further correspondence after December the 28th by Mr. Rothbard with you or by you with him?

A. There was not.

Q. After the failure to do anything further, after the letter of December 28th, did they continue the request for permit or negotiations for permit with you?

A. It ceased altogether, to the best of my recollection.

Q. Now, dealing first with this last application of the Civil Liberties Union in reply to your request as to who the speakers were to be, you were advised that one of the speakers was Congressman Maverick, and as a matter of fact, Commissioner Casey, on the stand the first day of your examination you stated in court, did you not, what the contents of this application was in reply to Mr. Ernst's question?

A. I did.

Q. Did you receive a telegram from Congressman Maverick dated June 4, 1938, bearing upon the fact as to whether or not——

MR. ERNST: Your Honor please——

MR. HERSHENSTEIN: Just a minute.

MR. ERNST: —I don't want him to answer.

Q. Just a minute—whether or not he was actually to be a speaker and in which he states "You are reported"——

MR. ERNST: Now, your Honor please——

MR. HERSHENSTEIN: Now, you are not before a jury, Mr. Ernst, let me finish my question.

MR. ERNST: No.

MR. HERSHENSTEIN: Are you afraid to have the telegram read?

MR. ERNST: No.

MR. HERSHENSTEIN: I have a right to read it and if he objects to the question——

MR. ERNST: There is no proof there was a telegram sent by Maury Maverick; there is no proof. If you want Maury Maverick here or will let me read the telegram he sent me when I found out you got that, we will have them both in.

MR. HERSHENSTEIN: All right.

MR. ERNST: Will you consent?

MR. HERSHENSTEIN; Then you can disprove it.

MR. ERNST: No, will you consent to the reading of the two telegrams signed Maury Maverick?

MR. HERSHENSTEIN: I consent to nothing.

MR. ERNST: Your Honor, we object to it.

MR. HERSHENSTEIN: We have this telegram and I intend to read it into the record.

MR. ERNST: Your Honor please, I object to the introduction of any telegram purporting to be sent by anybody not in the courtroom unless there is proof that Maverick was the signer of the telegram sent out.

THE COURT: Certainly if one goes in the other must.

MR. ERNST: That's all I am asking, perfectly happy if you take them both without Maverick or we can get him here.

MR. HERSHENSTEIN: I don't care what you do but I am going to have this telegram.

MR. ERNST: All right, if your Honor will rule that a telegram which I got from Maverick may also go into evidence, both of them improperly if they are not admissible——

MR. HERSHENSTEIN: May I ask counsel how he knows we got this telegram?

MR. ERNST: I heard of it through Mr. Maverick.

MR. HERSHENSTEIN: Oh, pardon me.

MR. ERNST: I know about it.

MR. ERNST: Moreover, your Honor, they are both dated around June 4th or 8th, which is somewhat after the date of the application.

MR. HERSHENSTEIN: Oh, I know that.

MR. ERNST: But I would just as soon have both go in. However, no one goes in without the other.

MR. HERSHENSTEIN: It bears directly on his testimony concerning——

THE COURT: Of course, I need hardly tell you, Mr. Hershenstein, that the telegram cannot go in under the strict rules of evidence.

MR. HERSHENSTEIN: I understand that.

THE COURT: So that unless they are waived, I can't admit it.

I am glad to see the Congressman apparently patronizes both telegraph companies.

MR. HERSHENSTEIN: I shall withdraw the offer.

MR. ERNST: I am happy to have a reciprocal waiver for both telegrams.

MR. HERSHENSTEIN: I shall withdraw the offer for the present.

Q. Now, Commissioner, the Civil Liberties Union application and the CIO application were made approximately the same time; that is, the latter part of December, last year?

A. That is right. The dates speak for themselves.

Q. All of the other six or seven applications which were offered in evidence were all admittedly approximately during the month of May, 1937, isn't that the fact?

A. That's right.

Q. Now, Mr. Ernst in his examination of you seemed to limit the number of protests which you received prior to January the first, 1938, with regard to the applications for permits of the CIO and the American Civil Liberties Union to three protests. Isn't that a fact?

A. Yes, that is right.

Q. As a matter of fact, however, prior to December, 1937, had there been any public demonstration from which you were able to observe the attitude of the people of Jersey City with regard to the granting of these permits?

MR. ERNST: Which permits, may I ask? Which ones?

MR. HERSHENSTEIN: The two permits; the Civil Liberties Union and the CIO.

MR. ERNST: And these are meetings prior to what?

MR. HERSHENSTEIN: Yes.

MR. ERNST: Prior to what?

MR. HERSHENSTEIN: Prior to the first of the year.

MR. ERNST: And prior to the making of the application? I want to get the date.

MR. HERSHENSTEIN: At about the same time, prior to the date upon which the meetings were to be held.

MR. ERNST: And after the date of the application?

MR. HERSHENSTEIN: Maybe prior or between the date of the application——

MR. ERNST: Well, I am sorry. Go ahead. I just wanted to get the date of those meetings.

A. There was a public demonstration around the 28th, I think it was, of December, in the Armory.

Q. Yes.

A. The veterans——

Q. By the veterans?

A. Yes.

Q. And you had received also, had you not, the resolutions which you refer to in the correspondence with Mr. Frazer, by the various organizations, copies of which were sent to Mr. Frazer?

MR. ERNST: May I hear that question, please?

(Pending question read by the reporter.)

MR. ERNST: If your Honor please, not only the resolutions themselves, but the dates speak for themselves approximately as to their receipt.

MR. HERSHENSTEIN: All right.

MR. ERNST: My recollection is that they were not received by that time.

MR. HERSHENSTEIN: Well, the record will show it.

MR. ERNST: Yes.

Q. And you had known from the reports you read in the newspapers by your testimony concerning the activities of Mr. Carney, had you not?

A. I had.

Q. You knew the occurrence of November 29th by Mr. Carney and his representatives in Jersey City?

A. I did.

Q. Did you take all of those things into consideration?

A. I did.

Q. When you passed upon the application?

A. I did.

MR. ERNST: Which application, may I ask?

MR. HERSHENSTEIN: The Civil Liberties Union and the CIO.

MR. ERNST: May I ask whether the question really means—if so, I would like to object—that Mr. Carney's distribution of pamphlets in Jersey City was taken into consideration with respect to a Civil Liberties Union application, or CIO?

MR. HERSHENSTEIN: I asked of both. The witness says that the statements he read concerning Mr. Carney——

MR. ERNST: Yes.

MR. HERSHENSTEIN: The acts which Mr. Carney's representatives committed in Jersey City on November 29th.

MR. ERNST: Yes.

MR. HERSHENSTEIN: The meetings which were held by these various organizations—whether all of these things were factors in his determination for the refusal.

MR. ERNST: Of what.

MR. HERSHENSTEIN: Of the CIO permit and the holding in abeyance of the Civil Liberties permit.

MR. ERNST: Oh.

A. I took them all into consideration.

Q. Now in denying the CIO application, which Mr. Spaulding Frazer made, did you exercise your best judgment and best discretion as to whether or not the granting or refusal of this permit——

A. I did.

Q. —would create disorder or riot?

A. I did.

Q. Now, as to the other applications, which were all made during the month of May, with the exception, I think, of the two Burkitt applications, which were April 22d——

MR. ERNST: Yes.

Q. —had there been occurrences between December and May, such as meetings and other resolutions, which you took into consideration in forming your determination as to whether those permits should or should not be granted?

A. I took everything into consideration.

Q. Now referring particularly to that, we need not waste much time on it, was there a large meeting held in the Armory on the evening of January 6, 1938?

A. There was.

Q. And who sponsored that meeting, sir?

A. The Chamber of Commerce.

Q. Were you present?

A. I went there, yes.

Q. Will you please state to the Court how many people you estimate were inside and outside of that Armory?

A. About 40,000 people.

Q. Will you state to the Court whether that meeting was a partisan or a non-partisan demonstration?

A. A non-partison demonstration.

Q. Were there any speakers of the Republican Party addressing the audience?

A. There was.

Q. Who was it?

A. Judge Carey——

MR. ERNST: If your Honor please, may I ask do you mean bi-partisan or non-partisan?

MR. HERSHENSTEIN: I will say un-partisan.

MR. ERNST: What?

MR. HERSHENSTEIN: Un-partisan.

MR. ERNST: Un-partisan.

MR. HERSHENSTEIN: Everybody.

MR. ERNST: All parties?

MR. HERSHENSTEIN: All parties, by all parties.

MR. ERNST: Communists, socialists, all parties?

MR. HERSHENSTEIN: There may have been——

MR. ERNST: All right, go ahead.

Q. And did that meeting, Commissioner, form a basis with regard to the attitude of the people of Jersey City, and was it used by you in helping to make up your mind as to whether these permits should or should not be granted?

A. It was.

Q. Now in addition to those things which occurred between——

MR. ERNST: May I ask, the question was whether the Armory meeting——

MR. HERSHENSTEIN: Yes.

MR. ERNST: —had a relationship to the denial of these permits?

MR. HERSHENSTEIN: Yes.

THE WITNESS: Not them permits. That was the——

MR. ERNST: The two particular permits.

MR. HERSHENSTEIN: I refer to the May permits.

MR. ERNST: They had no relation to these two applications.

MR. HERSHENSTEIN: Of course not.

MR. ERNST: These are after.

MR. HERSHENSTEIN: This is a continuation, though, of what had occurred.

MR. ERNST: All right; it was after.

Q. Now in addition to those things which you have described occurred, I now refer you, Commissioner, to some of the letters or protests which, although offered, were not

referred to by Mr. Ernst, and which will increase the number of protests which were received by you prior to the first week in January or around the first week or two in January, 1938. I refer now to the communication which you received from the Association of the Sons of Poland, bearing date December 31, 1937, in which they state—I will paraphrase—that they are an organization of 16,000 members, and they resolve that this association approves the stand taken by the Chamber of Commerce of Jersey against all subversive and communistic movements directed against our democratic form of government.

MR. ERNST: If your Honor please, I have only this objection, that I want the record clearly to indicate that those instruments can have no possible bearing on the denial of permits to the plaintiffs in this suit.

MR. HERSHENSTEIN: I am not so sure about that.

MR. ERNST: Well now we will have to have the date on each one.

MR. HERSHENSTEIN: I have given you the date.

MR. ERNST: And if it is after the denial of the permit——

MR. HERSHENSTEIN: I have given you the date.

MR. ERNST: If it is after the denial of the permit, I will move to exclude it, except on the possible theory that we are approving a plan or conspiracy, and that these letters go to that, rather than the question of the denial of the permits, because the permits were denied, finished, before these letters.

MR. HERSHENSTEIN: Now, wait. That is not the fact.

MR. ERNST: Get the fact.

MR. HERSHENSTEIN: Mr. Ernst himself stated that the Civil Liberties Union application was not denied

As a matter of fact, their letter of December 28th makes an application for a permit during the first week of January, which will take us to about January the 7th, and therefore all resolutions and all protests would be evidential as to that particular resolution.

MR. ERNST: Except, your Honor, for the evidence which I elicited from the witness, that he never took any position or did anything in the matter after his last letter.

MR. HERSHENSTEIN: Well, we say——

MR. ERNST: And you can break him down——

MR. HERSHENSTEIN: That isn't what he said. He was asked whether Mr. Rothbard did.

MR. ERNST: No, no——

MR. HERSHENSTEIN: And he said Mr. Rothbard did nothing further about it.

MR. ERNST: I asked him whether he did, and then I asked him, "Would you today deny it?" He said, "Yes." I said, "When did you make up your mind?" He said, "I never did anything between then and today."

Now, if you want to prove he didn't tell the truth, it is admissible in cross-examination.

MR. HERSHENSTEIN: If Mr. Rothbard wanted to drop out, you can't blame this witness for dropping out.

MR. ERNST: I am not blaming anybody.

MR. HERSHENSTEIN: All right.

MR. ERNST: He said there was nothing further done about it. If it is cross-examination and you want to break him down, all right.

MR. HERSHENSTEIN: I press my question.

Q. That is a fact, is it not, that on December 31st you received this resolution?

A. I received it, yes.

MR. ERNST: What date?

MR. HERSHENSTEIN: On December 23d—I beg your pardon.

MR. ERNST: December 31st you said.

MR. HERSHENSTEIN: December 31st.

MR. ERNST: That is right.

Q. On December 23d, 1937, which was prior to any refusal, did you receive from the Chamber of Commerce of Jersey City a letter in which they describe the attitude of the Chamber of Commerce of Jersey City?

A. I did.

MR. ERNST: Are those letters in evidence, Mr. Hershenstein?

MR. HERSHENSTEIN: I beg your pardon.

MR. ERNST: Are they in evidence?

MR. HERSHENSTEIN: Those are in evidence, I think.

MR. ERNST: No, they are not in evidence.

THE CLERK: They were marked for identification.

MR. ERNST: They were marked for identification.

MR. HERSHENSTEIN: No, I think they were marked in evidence. They were taken out of these envelopes.

MR. ERNST: Is the envelope marked in evidence?

THE CLERK: For identification.

MR. ERNST: I will be glad to have them go in. My impression was they were marked for identification. If they are not in evidence, then I suggest that Mr. Hershenstein, instead of referring to an attitude quote from

the letters with reference to the plaintiffs in question, the CIO or the Civil Liberties Union.

MR. HERSHENSTEIN: I did already quote the resolution of the Association of the Sons of Poland in which they are against all subversive and communistic movements directed against our form of government and——

THE COURT: I don't think anybody is not against that, Mr. Hershenstein.

MR. HERSHENSTEIN: Pardon me?

THE COURT: That is unanimous, I think, in this country.

MR. ERNST: That is not a protest against this permit.

Q. I refer now to the letter of December 23d, of the Chamber of Commerce in which they say:

"We now desire to go on record in the labor controversy involving our community," and so as not to encumber the record I go now to page two of the letter in which one of the preambles of the resolution states: "Whereas, because their invasion of the city would mean destruction of the industries and business and the consequent loss to employees and their families and to business and their employees, be it resolved, therefore, that we express to Mayor Hague our heartfelt expression of appreciation and gratitude for the efforts he is making on behalf of the people of Jersey City."

Did you understand from those preambles that the invasion of Jersey City which they make reference to was the invasion of Mr. Carney, which he threatened and which you read in the newspapers?

A. Well, that is what I thought it was.

Q. Now the Jersey City Real Estate Board on December 14th, which is prior even to the CIO application, was it not?

A. It was, yes.

Q. December 14, 1937. They had a meeting in which they resolved "that this Board go on record in approving the action heretofore taken by the Honorable Frank Hague, Mayor, and the Commissioners of the City of Jersey City in their attitude toward and in their handling of the conditions arising as a result of the invasion of the City of Jersey City by the CIO and the Communist Party."

That refers, does it not, to the CIO, which made the application for a permit?

A. That is right.

Q. On December the 16th, 1937, which was prior to either the CIO or the American Civil Liberties Union application, you received this from the Jersey City Lions Club, did you not, enclosing a resolution of that body?

A. Let's see them. I didn't receive that.

Q. That is so, isn't it?

A. No. I didn't receive that.

MR. HERSHENSTEIN: That is part, if your Honor please, of the exhibit, and in view of the fact it is the exhibit——

MR. ERNST: It is not an exhibit.

Q. Did you see the resolution?

A. Just a minute.

Q. Did you see the resolution?

A. I saw the resolution——

Q. Will you look at it and see whether or not you did? Here it is, in back of it. Did you see this resolution? Read it.

THE COURT: We will adjourn now. Do you want the Commissioner back in the morning?

MR. HERSHENSTEIN: I am afraid I shall have to have him back, yes, your Honor. I thought we would get through early tonight.

(Thereupon an adjournment was taken to Thursday, June 9, 1938, at 10:30 A. M.)

Thursday, June 9, 1938.

Case continued.

Appearances as before.

DANIEL CASEY resumed the stand.

CROSS-EXAMINATION.

By MR. MATTHEWS:

Q. Commissioner Casey, did you confer with me last night preparatory to my examining you on the balance of your direct examination today?

A. You did.

Q. And at that time did I have with me the testimony which you gave on the three days, is it, up to now, that you have been on the stand?

A. Yes, sir.

Q. I call your attention to your testimony at page 561, which I think, your Honor, is the session of June 3d. At page 561, Commissioner, I will read the question propounded to you by my opponent—well, I will go to 560 to keep the context:

"Q. I would like to know what your impression was from the newspapers.

"A. I don't feel like expressing my opinion.

"Q. You don't like to. Now, there is a fourth person on that application, a man named Ernst. Did you look up whether he had spoken around at street-corner meetings, and whether there had ever been disturbances?

"A. I never heard of the gentleman until I saw his name on the application."

Now, let me interrupt you at this moment. You so testified?

A. Yes, I did.

Q. Let me interrupt you at this moment to show you a part of exhibit—is that P-12?

MR. HERSHENSTEIN: All P-12.

Q. (Continuing.) A part of Exhibit P-12, a letter on the stationery of Samuel L. Rothbard, addressed to you, a letter addressed to you, and that part of the letter which says:

"The speakers will be Congressman Maverick, Congressman Jerry O'Connell, Congressman Allen and Morris L. Ernst."

Do you remember receiving that letter?

A. I do.

Q. Now that is dated, is it not, December 20th?

A. It is.

Q. I call your attention further to this testimony which you gave on the aforesaid date:

"So he was not stamped as not being allowed to come into Jersey City, in your mind, because of being a Red or a radical or dangerous, is that right, December 22nd?"

A. That is right.

Q.

"Answer: I forgot all about Mr. Ernst at that time.

"Q. What?

"A. I forgot all about him. I thought you were out of the picture.

"Q. December 22nd, this is. At that time was there anything in your mind that would lead you to believe that the fourth speaker, Ernst, would, by what he would say at a meeting, create a disturbance?

"A. Not at that time, no, sir."

Now, during conference with me last night did you volunteer to me that you wanted to correct that date?

A. I do—I did.

Q. And why? What did you show me that prompted you to that correction?

A. A clipping in the *Jersey Journal* with a big streamer headline on it pertaining to a speech that Mr. Ernst made in Washington at the Lawyer's Guild.

Q. Have you——

A. In reference to—it is here; I told my chauffeur to bring it out here. I guess he is out in the hall there.

Q. Will you get it for me? Is there a sergeant-at-arms available?

MARSHAL MCDERMITT: Yes, there is. What is the gentleman's name, Mr. Casey?

THE WITNESS: His name is Scanlon; he ought to be in here. He may be down in the car.

Q. While we are waiting, if your Honor please, I could go to another point of his testimony, unless you wanted to keep this together; I think I had better keep it together.

MR. MCDERMITT: Your Honor will appreciate the position, of course, that I am in. I wonder if the witness might go get it.

THE COURT: Certainly, if that is easier. Do you want to go get it?

THE WITNESS: If it is all right with you, your Honor.

(The witness temporarily withdrew.)

MR. MATTHEWS: I want to find my page of the record.

THE COURT: 562 was the page of the record, I think. 561 is where Mr. Ernst last referred to.

Q. My last question, as well as I remember it was, did you show me from your records a newspaper account which changed your mind as to the date that you gave in your testimony to Mr. Ernst?

A. I did.

Q. I show you a newspaper account which you have just taken out of an envelope which you produced, and ask you first of all what is that envelope?

A. That envelope is where I keep clippings of every month——

MR. ERNST: Every what? I didn't hear you.

THE WITNESS: Every month; I file them away monthly.

Q. Now——

A. And that's what I have been doing for the last, I guess, four or five months. Before that they were kept in a big book and pasted in there, and where they handle that book in headquarters now, I handle these in my office.

Q. What is the date of that clipping and from what newspaper is it?

A. It is from the "Jersey Journal" and it is dated the 18th of December, 1937.

Q. Now, on the 18th of December, 1937, did you see that clipping from that edition of the "Jersey Journal"?

A. I did.

Q. Did you read this: "C.I.O. leader talks of machine guns. Ernst bitter in attack on Mayor Hague. Counsel threatens new invasion of Jersey City in defiance of ban on C.I.O."

A. I read it, yes, sir.

THE COURT: May I see it?

MR. MATTHEWS: Your Honor, may I finish with it?

THE COURT: Oh, I beg your pardon.

Q. Did you read further in that clipping these words purported to be uttered by Mr. Ernst on the occasion of his speech at the Lawyers' Guild banquet or meeting in Washington: "You can——"

MR. ERNST: Your Honor please, I don't mind reading from the clipping, but I don't want the counsel to

testify "purported to be said by Mr. Ernst." Whether they are even purported to be said by Mr. Ernst ought to appear in the clipping and not in the mind of counsel.

THE COURT: What does the clipping say?

MR. ERNST: I don't know. Just read from the clipping instead of "purported to be said."

MR. MATTHEWS: I thought I was courteous to the gentleman.

THE COURT: Is it in quotation marks?

MR. MATTHEWS: Yes, quotes.

Q. Did you read this said by Mr. Ernst on that occasion?

MR. ERNST: Is that "said by Mr. Ernst," is that in quotes?

(Mr. Matthews shows clipping to Mr. Ernst.)

MR. ERNST: Where do you want to read from?

MR. MATTHEWS: "You can write all the statutes you want," that paragraph, "You can write all the statutes you want."

Q. Quotes from Mr. Ernst, that is not in the paper—"You can write all the statutes you please but if a mayor like Hague can tear them up you must go on a new tack. So far there has been no evidence of machine guns and I hope there will be none because I know we would be playing into the hands of Mayor Hague."

Do you remember reading that?

A. I remember, yes, I read the whole article.

Q. Now, in that same envelope, sir, under clipping dated December 20, 1937, did you find and show me this clipping headed "Says Ernst was quoted correctly"?

A. Yes, that is on the 20th.

Q. And did you read that clipping and did you read the following: "General Press Association special corre-

spondents for the Jersey Journal at Washington today declare that Morris Ernst, C. I. O. counsel, had been correctly quoted in its dispatch to the Jersey Journal Saturday reporting speech in which Ernst assailed Mayor Frank Hague and referred to machine guns. The speech was delivered at a meeting of the National Lawyers' Guild. Ernst was quoted as saying"—I won't repeat it,—it is the same quotation, your Honor—then following: "The following telegram was received by the Jersey Journal today"—quotation in the quotation—"Ernst's quotes as sent by us and as published in Saturday's Journal are entirely accurate. They were taken down first-hand at the meeting by one of our staff members of twenty years' newspaper experience and transcribed immediately afterwards. Signed General Press."

Did you read that also?

A. I did, yes.

MR. MATTHEWS: I ask that the quotation which I read from Mr. Ernst be marked for identification and that the quotation that I read concerning Mr. Ernst's denial that he was correctly quoted be marked for identification.

MR. ERNST: May I just have counsel repeat the last statement? You are going to mark for identification what about my denial?

MR. MATTHEWS: The one in which you denied apparently that you were correctly quoted.

MR. ERNST: There is no clipping that has been read yet——

MR. MATTHEWS: I will be very glad to read it.

MR. ERNST: There is only, as I understand it, a clipping being read that somebody said that if I denied it I wasn't correct in my denial.

MR. MATTHEWS: I will be very glad to give you the denial.

MR. ERNST: Do you find a quote there from me denying it?

Q. Will you find it right there?

THE COURT: May I ask who is the General Press Association? Maybe some of our friends of the press might state what is the General Press Association.

MR. MATTHEWS: Can any of you gentlemen help the Court?

A NEWS REPORTER: I never heard of it.

MR. STEVENSON: (A. P.) Special correspondents for the "Jersey Journal" who cover local news that happens in Washington.

THE COURT: Do you mean it is just their own correspondent there?

MR. STEVENSON: Well, they are correspondents for the "Jersey Journal" who cover local news that happens in Washington for various newspapers.

THE COURT: They are not like the A. P. and the U. P.?

MR. STEVENSON: It is a special service those newspapers buy.

MR. MATTHEWS: I don't think at this stage, if your Honor please, since I haven't the information and since it is a press association, that we had better consider anything except the kindly information given by that gentleman, but I wouldn't want to consider that a General Press Association which has as substantial a newspaper as the "Jersey Journal" as a correspondent wouldn't be something to be reckoned with.

THE COURT: I am not relying on them.

MR. MATTHEWS: Oh, I see.

THE COURT: I am just inquiring who they are.

MR. MATTHEWS: Thank you.

THE COURT: That is not evidence, of course; that is just a colloquy with the Court.

MR. MATTHEWS: This newspaper man—apparently his newspaper is not a member of the General Press Association, because his risibilities were aroused.

THE COURT: He is an A. P. man, if you want to know who he is.

MR. MATTHEWS: No. Thank you, Judge. It doesn't make any difference who any of them are.

THE COURT: You like them all then?

MR. MATTHEWS: Yes, your Honor. They all have a job to do and I like to help them if I can, but never to curry their favor.

THE COURT: Did you hear that, gentlemen?

MR. MATTHEWS: Yes, they know; the local boys, too.

Mr. Ernst has just spoken to the Court by way of objection as to my characterization of the second paper I wanted to mark for identification. In order to remove what might be an objection, I find in the same clipping from the same paper from which I just read, this statement:

"In Sunday's newspapers Mr. Ernst was quoted as giving two different versions of his reference to machine guns. One paper stated that 'Mr. Ernst denied he had said as reported "I hope there will be no evidences of machine guns, because we would be playing into the hands of Mayor Hague." Instead, the lawyer insisted he had told the National Lawyers Guild conference 'Hague's tactics were undemocratic. He broke down the Constitution in a more serious way than if he had used machine guns, tear gas and spies.'

"Another newspaper carried the following: "quotation from Mr. Ernst—'What I did say was that where we have had a deprivation of civil liberties in other cities, we have also had examples of spies, machine guns and tear gas,' he (Ernst) explained. 'And I did say that Mayor Hague's methods have been those of the worst dictator.' Informed Saturday of Ernst's speech, Mayor Hague said, 'No machine guns will be used by Communist invaders in Jersey City.' "

It is those two papers that I ask to have marked for identification.

MR. ERNST: No objection.

(Marked Exhibits D-1 for identification and D-2 for identification.)

THE CLERK: The large clipping has been marked D-1 for identification and the short one D-2 for identification.

MR. MATTHEWS: Would your Honor like to see them?

THE COURT: No, not now.

MR. MATTHEWS: All right.

Q. The permit for the Civil Liberties Union at which meeting Mr. Ernst was to be a speaker was not granted because the request was not further prosecuted, was it?

A. That is right.

Q. Now, you said in your direct examination, when you were questioned about stopping automobiles and searching them, that that is the policy of the law enforcement department of Jersey City?

A. I did.

Q. What has been the result of that stopping of cars?

A. Different criminals picked up, men wanted for murder in other States, men with guns, blackjacks, brass

knuckles; men with criminal records, escaped prisoners. I could go on with quite a line, but can't specify just——

Q. All right, can you give us a salient example of where a gentleman was picked up who had a tie-up with the CIO?

A. Yes, sir; Patrick Whelan was picked up on the Pulaski Skyway on February 6th, I think it was, with four other men in a car. They had a .45 calibre United States Army regulation gun in the car.

Q. And what was done, if anything, about that?

A. They were all held for the grand jury.

Q. And then what happened?

A. I couldn't tell you. I don't know anything about the case. They were picked up right coming into Jersey City on the Pulaski Skyway by the Hudson County police.

Q. Do you recall the names of any of them and their affiliations?

A. I have with me the pictures of the men that were in the car, and the records of the men.

Q. Will you tell me where I will find those?

A. I have them here.

Q. Oh, you have them in your pocket?

MR. ERNST: Would counsel mind indicating the date of this pick-up?

MR. MATTHEWS: February, he said.

MR. ERNST: February——

THE WITNESS: That's February 6, 1938.

Q. February 1938, you say?

A. This year, yes. There is the records and the pictures (producing).

MR. MATTHEWS: The witness produces, if your Honor please, and my opponents, four cards—five cards—one purporting to be the record of Bernard Weinkrantz, the second the card of one Patrick J. Whelan, the third the card of one Benjamin Field, a

other one the card of Jesse B. Suttka, and the other, the last one, the card of Charles Hensen.

Q. Were all of those named in these cards, all of those people, apprehended at the time you searched the car you speak of?

A. They were.

Mr. Ernst: If your Honor please, unless this witness searched the cars, this is not admissible, number one. Number two, if there is an intention to put in those cards, or the reason for them, I must object, because these are merely reports, I assume, written by somebody, without these people here——

The Court: I thought those were the criminal records, aren't they?

The Witness: They are the records.

Mr. Matthews: Criminal record cards, with the photographs.

Mr. Ernst: Are these the crimnial record cards in the court in Jersey?

The Court: In the Bureau of Identification, I think.

The Witness: The Bureau of Identification, the records from the Hudson County Police. Here is the records, if you want to look at them.

Mr. Matthews: The witness hands me, Mr. Ernst, the records (handing to Mr. Ernst).

Mr. Ernst: Is this all you are going to introduce?

Mr. Matthews: I don't know yet.

Mr. Ernst: No objection to these at all.

Mr. Matthews: Do you want to look at this, so if I do want to introduce it, you will know what it is?

MR. ERNST: Are these the same people?

Q. Are those the same people, Mr. Witness?

A. Those are the same people.

MR. MATTHEWS: May I continue while you look that over?

MR. ERNST: Yes, surely.

Q. The cards from which I have read the names, do they show the pictures of the men who were arrested in that car that you spoke of in February?

A. They do.

Q. On the back of these cards, I notice in addition to the names that there is a legend about the crime for which they were arrested?

A. Yes.

Q. And some other data.

MR. MATTHEWS: Did you look at that on the back?

MR. ERNST: Yes, yes, that's all right. No objection to those.

MR. MATTHEWS: Then at this time I would like to offer for identification all of these cards. There are five of them.

(Marked D-3, D-4, D-5, D-6 and D-7 for identification.)

Q. Now, you have handed me some other papers which I have just handed to counsel and which he has just handed back to me on the stationery of the Bureau of Criminal Identification, Hudson County Police, Hudson County, New Jersey. First of all, just answer my questions carefully. What are those records?

A. They are records where men had been locked up in different cities in the United States.

Q. Where does the information on the records come from?

A. The Bureau of Criminal Indentification in Washington.

Q. In Washington, D. C.?

A. Yes, sir.

Q. And how does it come, in original communication or how?

A. It is sent for. Fingerprints are taken in the city that the man is locked up in, sent to the Bureau of Identification in Washington. In four or five days the complete record of the man is sent back to the city those fingerprints are sent from.

Q. Now, is that the original communication that you received? Answer yes or no.

A. I didn't receive it, it come to the Hudson County Police.

Q. And who would be the gentleman to whom the information came?

A. It would come to Chief Dolan of the Hudson County Police.

Q. And he would be the one?

A. His office, yes.

Q. He would be the one who could identify it as the original document coming from the Washington bureau?

A. Yes, sir.

MR. MATTHEWS: There being a technical objection to my introduction of it without the proper proof, I will abide the arrival of the gentleman named Dolan.

THE WITNESS: I think that Dolan is sick, your Honor.

MR. MATTHEWS: May I have it marked for identification, your Honor, so that it may be identified when the witness goes on the stand?

THE WITNESS: Counselor, I think Chief Dolan has been sick; he might be back but the man that's in charge there is Inspector Neary there. If Chief Dolan is there it is all right, but I am not certain.

MR. MATTHEWS: Thank you, sir. There are five pages to this which we would like to be clipped and marked as one exhibit.

(Marked Exhibit D-8 for identification.)

MR. ERNST: May I see the cards that were introduced?

THE CLERK: D-3 for identification is a record of Weinkrantz; D-4 for identification Charles Hansen; D-5 for identification Jesse F. Suttka; D-6 for identification Benjamin Field; D-7 for identification Patrick B. Whalen; D-8 for identification are five slips marked as one exhibit. They are the criminal record sheets of the same five name in the pictures.

Q. Commissioner Casey, as head of the Department of Public Safety of the City of Jersey City was your motive in all of the matters of the denial of permits to speak a motive of protection of the people of Jersey City and the general welfare and peace of your community?

A. It was, yes.

MR. ERNST: I move to strike that out, the question of motive. I think he has already said it several times.

THE WITNESS: I think I answered that for Mr. Ernst.

MR. ERNST: His purpose is something different from his motive. If you ask his motive it opens a wide field.

MR. MATTHEWS: My friend has not only impugned his motive, he has called him a recalcitrant witness on several occasions.

THE COURT: I think "purpose" is the more accurate word.

MR. MATTHEWS: I don't want to analyze the psychic process but it seems to me motive goes behind purpose. However, I accept your Honor's suggestion

and the question may read "purpose," if your Honor will allow it.

Q. The reason I ask you that question is that I want to call your attention now to page 600 of the testimony. May I ask you to look at that. While you were on the stand Mr. Ernst said during your examination and during objection, and I ask you if you remember him saying it: "And we will tie that up"—meaning the question of Mr. Borah coming to Jersey City—"with a long line of applications, of changes of dates, of delays, of procrastinations, of run-arounds; and so there is no use of getting people for a date and then have him drag you over the date."

You heard that said, did you not?

A. I did, yes, sir.

Q. Now, how many permits or applications for permits were there actually made to you during all of the time concerning which you have been questioned by Mr. Ernst, December to May?

A. Well——

MR. ERNST: They are all in evidence.

THE WITNESS: They are in evidence.

Q. Well, there are approximately eight?

A. Well, I wouldn't say whether there is eight or five or six or seven there; they are there and offhand I couldn't say, counselor.

Q. In any of the applications did you delay answering beyond three days?

A. Not to my knowledge; I think I answered them right away. The applications can speak for themselves, counselor.

Q. Yes, that is a very good answer to me but I did want that before the Court.

MR. MATTHEWS: When Mr. Ernst is through with you you may go to Ireland.

THE WITNESS: Thank you.

MR. ERNST: Are you through?

MR. MATTHEWS: I am.

RE-DIRECT EXAMINATION.

By MR. ERNST:

Q. Mr. Casey, Mr. Hershenstein examined you and you were quoted as saying something in a letter about Congressman O'Connell. Do you recall the letter and the reference? This was the letter about the battlefields of France and Communists.

A. Yes.

Q. Did you happen to know at the time you wrote the letter that Congressman O'Connell had been elected to Congress on the Democratic ticket from his state, did you happen to know that?

A. Well, I know he is classed as a Democrat, elected, he must be a Democrat if he was elected there as a Democrat.

Q. I didn't ask you that, I asked you did you know at the time that you wrote the letter that Jerry O'Connell was a Democratic Congressman from his state. Did you know that at the time?

A. Yes, I know he was a Congressman.

Q. So your position is, I take it, that you can be a Democrat and a Communist?

MR. MATTHEWS: I object, if your Honor please.

A. Oh, well, now——

MR. MATTHEWS: Just a minute, please, Mr. Witness.

THE COURT: Does the letter say that Congressman O'Connell is a Communist?

MR. ERNST: I would like to see the letter.

MR. MATTHEWS: Give me those exhibits now for Mr. Ernst. May I, while they are looking for that, press my objection that this is not a political case in the sense of a party case, unless you want to call the Communist Party a party.

Q. You said in your letter that the people of Jersey City also resent Mr. O'Connell fighting the cause of the Communists; is that right?

A. I did, yes.

Q. And so you take the position that being an elected Congressman of the Democratic Party is also fighting the cause of Communists?

MR. MATTHEWS: I object, your Honor, please. That is a non sequitur. That question is not only improper but it is incompetent.

MR. ERNST: I previously, your Honor, asked whether he knew that he was a Democratic Congressman; he said yes.

THE COURT: Had you any evidence, Commissioner —you can object to this question—I am going to ask the question so either side can object to it. Had you any evidence before you, Commissioner, that Congressman O'Connell was fighting the cause of the Communists?

THE WITNESS: Well, from articles I have read, I don't remember now when, that anything radical, that Mr. O'Connell was interested in.

Q. I will take that. Now, you did testify that at the time of the Civil Liberties Union application and the CIO applications you did not investigation Mr. O'Connell, is that right?

A. If I said that it must be in my testimony; I can't recall just what I did say.

Q. Where did you get the information that Mr. O'Connell was over in Spain?

A. The papers carried it.

Q. Did you check it up with Mr. O'Connell?

A. I did not, no.

Q. You believed what you saw in the papers?

MR. MATTHEWS: I believe, if your Honor please, that is not a fair question to this man whether he believed it or whether he checked it up.

MR. ERNST: I withdraw the question.

MR. MATTHEWS: I think the public press is entitled prima facie to belief.

Q. You believed it sufficiently to incorporate it in a letter including reasons for the rejection of a permit?

A. That's right, I did.

Q. And you did not investigate with any organization connected with Spain?

A. I did not; no, sir.

Q. Did you happen to investigate Jerry O'Connell through newspaper clippings and newspaper reports which were unfriendly to you and Frank Hague or is it only the papers that supported you?

A. Well, I think that I have read it in different papers, whether they are friendly—I don't know what you mean, friendly. Do you mean—if you will state any paper to me that is unfriendly——

Q. I will state a paper. You testified that you do not read the *Evening Post*.

A. I did.

Q. Are there other newspapers that you don't read?

A. Well, I told you what I generally read.

MR. ERNST: May I look at this which was referred to?

MR. MATTHEWS: Oh, no.

THE WITNESS: That is not in evidence.

MR. ERNST: Your Honor please, I subpœnaed it and offer it in evidence, for identification—just a moment, let me finish, I will not steal it from you; I just want to hold it so as to identify.

MR. MATTHEWS: I don't know, sir, whether I want to trust you to take it.

MR. ERNST: Just hold it in the presence of the Judge, sir? If you will just be polite a moment.

MR. MATTHEWS: Don't tell me manners, Ernst.

MR. ERNST: If your Honor please, the statement was made either by the witness or the counsel testifying for the witness that the clippings marked for identification were taken from an envelope; the witness identified the envelope as being one of a series of envelopes. The witness, as I recall it, testified that each month he kept clippings in an envelope.

THE COURT: Maybe I can clear it up. Do you keep clippings of all newspapers, Commissioner?

THE WITNESS: The papers that I get in the office, yes, I get the *Times*, I get the *Jersey Journal*, the *Observer*.

MR. MATTHEWS: *Newark News?*

THE WITNESS: Once in a while the *Newark News;* the *Herald Tribune*.

THE COURT: So that those clippings would be clippings from those newspapers?

THE WITNESS: They are all clippings from those newspapers.

By MR. ERNST:

Q. And these are clippings for one month?

A. Clippings for the month of December, 1937.

MR. ERNST: Now, I ask, your Honor, to have an opportunity to look through these clippings.

MR. MATTHEWS: When he subpœnaes those clippings with the proper subpœna so that I can bind them in the record he is welcome to them all and they will drown him. You are welcome to them and they will drown you.

MR. ERNST: I want to examine the witness further in regard to the envelope, your Honor please. May I have it?

MR. MATTHEWS: Oh, the envelope.

MR. ERNST: That's right. Be a good boy, we will get along.

MR. MATTHEWS: You are acting the boy, I am trying to act the man. Go ahead.

Q. Let me ask you: In here there are clippings from the *New York Times.*

A. There is, yes.

Q. Are there editorial clippings from the *Times?*

A. I think there is.

Q. Did you ever read an editorial in the *New York Times* about Frank Hague?

MR. MATTHEWS: Object, immaterial. This is a question of Jerry O'Connell.

THE COURT: Yes, I think you must confine it to Congressman O'Connell.

Q. There are clippings in here that refer to other than Jerry O'Connell?

A. I will have to look them over to find out.

Q. Will you look them over and if you find a clipping that does not refer to Jerry O'Connell we will go on; otherwise we will sit here.

MR. MATTHEWS: Well, if your Honor please, so this New Yorker has assumed your bench. I think that he isn't going to say whether we will go on or whether we will sit here.

MR. ERNST: Your Honor——

MR. MATTHEWS: I object to the use of this envelope, if your Honor pleases, in that fashion. I am willing to offer it all in evidence for you; and again I

repeat I am a Greek bearing gifts to you, sir, when I offer it.

MR. ERNST: If your Honor please, if I have acted unduly in your court, I apologize to you, sir. I don't think that I have, and I think there is no warrant for a statement that reflects both on you and me; and if my behavior has offended you, I apologize to you, sir.

THE COURT: I think I can manage my own court alone; I hope so.

MR. MATTHEWS: Well, it is nice to see him apologize to you.

Now, do you want to accept them into evidence, with the permission of the Court, may I ask you?

MR. ERNST: I have asked the witness a question: Did you find a clipping?

MR. MATTHEWS: He didn't even look at them. I took them away.

By MR. ERNST:

Q. Will you look at the clippings and see if there is any clipping there that doesn't refer to O'Connell?

MR. MATTHEWS: I object as incompetent, immaterial and irrelevant.

THE COURT: Any, he said; any.

MR. MATTHEWS: What?

MR. ERNST: Counsel himself said that this is an O'Connell matter, when I asked it the other way around. Now when I say, is there a clipping here that doesn't refer to O'Connell he objects the other way. What are you afraid of? Let him answer the question.

MR. MATTHEWS: I am afraid of nothing, and particularly not of you.

Q. Is there a clipping there that doesn't relate to O'Connell, Commissioner? Let's you and I get along.

THE COURT: Just look and see, Commissioner.

A. O. K.

Q. Just is there one clipping that does not relate to O'Connell?

A. There is some clippings here that don't relate to O'Connell, yes.

Q. There are? All right. Now I ask you, Mr. Commissioner, did you read the clippings that are in this envelope?

A. I did.

Q. You did. Did you ever read an editorial from the *New York Times* with respect to Hague, Frank Hague, on civil liberties in New Jersey, or the issues of this trial?

MR. MATTHEWS: I object, if your Honor please, as incompetent and immaterial.

Q. Did you ever read a clipping?

THE COURT: I don't see how that is material.

MR. ERNST: If your Honor please, he has testified on direct that he did not read the *New York Times* editorials or the *Tribune* editorials, and he testified further that if he had read them they would have no effect on him.

MR. MATTHEWS: I have no recollection of that testimony, sir.

MR. ERNST: Well, you were not here, that is one of your embarrassments.

MR. MATTHEWS: Just a minute. I am not embarrassed at all.

He should be confronted with the testimony. That is the rule of law.

MR. ERNST: I shall take care of that in due time, if necessary.

MR. MATTHEWS: Well now at this question, I ask that he be confronted with the testimony that he so testified.

MR. ERNST: Will you answer my question?

MR. MATTHEWS: I object to the question, I have an objection pending before the Court. I object and ask that he be confronted with the testimony that he did not read the *New York Times*.

MR. ERNST: I would like to have the witness answer my question.

THE COURT: Will you read the question, please?

(Pending question read by the reporter.)

THE COURT: Leave out "the issues of this trial." You may answer the rest of the question.

MR. MATTHEWS: I object to that and ask for an exception.

THE COURT: You may have an exception.

(Which exception is duly allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: Because an editorial about Frank Hague in the *New York Times* is neither competent nor relevant nor material to this issue.

THE COURT: I thought we were talking about Mr. O'Connell.

MR. MATTHEWS: No, Hague.

MR. ERNST: If your Honor please, the witness made up his mind as to granting or denial of permits on the basis of newspaper clippings.

THE WITNESS: If I remember——

MR. ERNST: It is highly pertinent, therefore.

THE WITNESS: If I remember correctly, I did state that I did read the *New York Times*, the *Jersey Jour-*

nal, the *Dispatch*, the *Observer*, and the *Herald Tribune*. You asked, I think, if I remember correctly—when you asked me the different papers, you asked me the *Post*, and I said yes, and then I said—I didn't get the *Post* when you gave me the question, and I said, no, that I don't read the *Post*.

MR. MATTHEWS: I object to the examination of this exhibit which is not in evidence, if your Honor please.

THE COURT: I thought you offered it.

MR. MATTHEWS: Well, he has not accepted it.

THE COURT: Oh.

MR. MATTHEWS: I want him to accept it, and am not bound by it. It is his witness.

THE COURT: Are you going to offer it?

MR. ERNST: No, I am not going to introduce this garbage until I look and see what is in it.

MR. MATTHEWS: Ah, ah, garbage for you, my boy, but dynamite for me.

MR. ERNST: I have an admission there that there is nothing there from the *Post*, to start with.

MR. MATTHEWS: Gentlemen of the press, that is your garbage.

MR. ERNST: That's right.

MR. MATTHEWS: Your garbage.

THE COURT: I thought you were not currying favor.

MR. MATTHEWS: That is not currying favor. That is just telling them; and again I tell them I don't curry their favor. They appreciate real guys.

Q. Will the witness continue to answer the question, please?

A. If I remember the question——

MR. MATTHEWS: The question was objected to.

MR. ERNST: You took an exception.

MR. MATTHEWS: No, but his Honor thought it referred to O'Connell. It refers to Hague.

THE COURT: It seems to me, Mr. Ernst, that this witness said that he made up his mind with respect to what the newspapers said about the popular sentiment, is that correct, not what they said editorially. There was no assertion that editorial writers were going to appear at the meetings.

MR. ERNST: I would like to know the witness's position on that. That will satisfy me.

THE WITNESS: Well, it is practically just like Judge Clark stated. I told you that I read the papers.

Q. You didn't read all the papers?
A. I didn't——
Q. You didn't read unfriendly papers, did you?

MR. MATTHEWS: Well, he said he didn't know what unfriendly papers were.

A. I asked you what unfriendly papers were. I told you the papers I read, if you class them as unfriendly. I don't class papers as unfriendly to me.
Q. Why didn't you read the *Evening Post?*
A. Because I didn't want to.

MR. MATTHEWS: Objected to. Perhaps for the reason that many people don't read it.

Q. When did you decide not to read the *Post?*

MR. MATTHEWS: If the *Post* man is here, that can't be currying his favor.

Q. When did you decide not to read the *Post?*

A. That question, your Honor, I think is ridiculous.

MR. MATTHEWS: Yes.

A. (Continuing.) I have got a perfect right to read what I feel like.

Q. Do you know what the name f Journal Square was previously?

MR. MATTHEWS: Objected to as immaterial.

THE COURT: The implication is it was named after the newspapers, I suppose?

MR. ERNST: No, no.

THE COURT: I don't see its relevance to this issue.

MR. ERNST: Just the name.

Q. What was the name previously?

MR. MATTHEWS: I object as immaterial. Just a minute, please, until the objection is ruled on, so that I may make my own record.

THE COURT: I will sustain it.

MR. MATTHEWS: I object as immaterial.

THE COURT: I have sustained it.

MR. MATTHEWS: Thank you.

Q. You didn't investigate through any organization or through the Congressmen themselves in respect to a trip to Spain, did you?

A. I did not, no, sir. I told you that a half a dozen times now, I think.

Q. Did you write the letter in which that reference is contained?

A. No, I didn't write it. It was typed.

Q. Did you dictate it?

A. I dictated it with my secretary.

Q. Was there a previous draft of that letter?

A. A previous draft?

Q. Or did you sit right down and dictate that letter?

A. I sat down with the help of my secretary and we dictated it.

Q. Yes. What is the name of the secretary that helped you on it?

MR. MATTHEWS: I object as immaterial to this issue.

THE COURT: I think what Mr. Ernst means is did you consult anybody about the letter.

THE WITNESS: If you will let me see that letter——

Q. Surely (handing to the witness).

A. No, I think my secretary and I got that letter out.

Q. What is the name of your secretary?

A. Walter Daly.

Q. Walter Daly.

THE COURT: It is in the record already.

A. It is in the record.

MR. MATTHEWS: All right, your Honor, on second thought——

Q. Did you make any investigation to support the statement contained in the letter that the Hudson County Committee for Civil Liberties was part of the International Labor Defense, or did you only get that from the newspaper?

A. The newspapers, I think.

Q. And you did not inquire——

A. I did not inquire, no, but from the hook-up, the general hook-up, one representing the other, I come to the conclusion—to that conclusion, rather.

Q. That's right. And the hook-up idea you got from newspapers?

A. The hook-up, yes.

Q. And you didn't have any one of your men get in touch with the Hudson County Committee or the ILD to find out whether that hook-up was as indicated in the Jersey *Journal*?

A. I did not, and I stated my reasons for it.

Q. That's all right.

A. Because—if you want them, I will give them to you.

Q. All right. Now in regard to the application from Morris Ernst, did you check up in any way on that?

A. I did not.

Q. You did not?

A. No.

Q. Did you know at the time that he was a member of the Banking Commission of the State of New York by appointment——

MR. MATTHEWS: I object to that.

MR. ERNST: Just let me finish the question.

Q. (Continuing.) By appointment of Governor Roosevelt and Governor Lehman?

MR. MATTHEWS: I object, if your Honor please. This is not competent direct examination or re-direct examination.

THE COURT: It is on the issue as to investigation. I will allow the question.

MR. MATTHEWS: Your Honor will allow me an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

A. I did not.

Q. Did you read in the newspapers of the period in controversy here that Mr. Ernst was denied a permit for admission directly because he was against dictatorships and in favor of civil liberties?

MR. MATTHEWS: I object if your Honor pleases.

MR. ERNST: I just want to know if you read it.

THE COURT: You may answer.

MR. MATTHEWS: Exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

A. No, I did not.

Q. Have you learned about it since the date of the application and up to the date of trial, did you ever hear of those facts?

MR. MATTHEWS: If your Honor please, how could he hear that? Why, nobody had ever heard that before. I think Ernst is telling us for the first time.

A. I wouldn't say that I have, counselor. I might have heard it.

Q. Yes.

A. My gosh, you hear a lot of stuff.

Q. That is right.

A. And you don't remember everything you hear. You are a wonder if you can do it.

Q. And you don't believe everything you hear either, do you?

A. No.

Q. And you don't believe everything you read either, do you?

A. Well, you gave me a statement yesterday from some paper here, and I know it was a darned lie, for I never interviewed the man, or he never interviewed me.

Q. And so in making up your mind in regard to permits, when you read some material in the newspapers, you didn't investigate that, the report in the newspapers, is that it?

A. I didn't investigate it, no. I took it on its face value.

Q. Now those cases referred to of some men who were picked up on February 6th, do you know if they have been brought to trial?

A. I couldn't tell you, counselor.

Q. Would you in the ordinary course of your position know if they had been brought to trial?

A. No, I wouldn't.

Q. Would you know if they had been acquitted on the charge for which they were picked up?

A. I would not.

Q. You wouldn't even know that.

A. I will explain to you, if you want me, why I brought that case out.

Q. No.

A. You were talking about cars being stopped.

Q. That's right. I understand.

A. With CIO workers, and I want to just prove why it was done.

Q. There is no evidence that they were CIO—you didn't see the car, did you?

A. No, I didn't.

Q. And there is nothing on those cards to show that they were CIO workers, is there?

A. Only what the men admitted and the papers carried.

Q. The papers. Now some A. F. of L. workers have also been picked up on suspicion at times, haven't they?

A. There is no doubt about that.

Q. No question about it. And a lot of people have been picked up on suspicion in Jersey City who were members of no union?

A. That is right.

Q. That's right. And so you do not mean to imply that there is any special meaning in the fact that these men who were picked up may or may not have been members of the CIO?

MR. MATTHEWS: I object, if your Honor please.

A. Well, that's what I am trying to prove——

MR. MATTHEWS: It has been proved that they had a gun with them in violation of law.

MR. ERNST: No, no, they didn't have a gun in violation of law.

MR. MATTHEWS: Yes.

MR. ERNST: There was a charge made against them that they had a gun in violation of law, and it may well have been planted; and you haven't proved here that it hasn't been.

MR. MATTHEWS: Mr. Ernst is planting everything but the truth in this case.

Q. Will you, Commissioner, find out if the case has been brought to trial since February? Can you find out right now?

A. That is up to the prosecutor of the county.

MR. ERNST: Does Mr. Hamill or Mr. O'Mara know about that?

MR. MATTHEWS: You can subpœna the records and do it in the orderly fashion. I object, if your Honor pleases.

MR. ERNST: All right. Let the record lie as it is.

MR. MATTHEWS: No, not the record lie; let the record stay.

A. I want to prove to you, Mr. Ernst——

Q. What?

A. —that we play no favorites in stopping cars.

Q. That is right. That's what I meant; that this was no proof against CIO, just that you stop all cars on suspicion?

A. But you brought the CIO car into it.

MR. MATTHEWS: That's for the C rt to decide. I object. Just a minute, Mr. Casey. That's for the Court to decide.

THE COURT: Yes.

Q. Now, may I ask one further question on which I would like to clarify the record on direct, and I think that the Commissioner would like to have the record clarified; if his counsel objects, I will withdraw the question, because it is not proper re-direct.

As I recall your testimony of yesterday in regard to picketing, the record is somewhat confusing as to whether you allow people from outside of the State of New Jersey, people who live outside of the state, to picket in Jersey City.

A. They have been doing it, right along here.

Q. And one other point I would like clarification on: Do you or do you not allow non-workers in a particular plant to picket a particular plant?

A. We don't allow non-workers, no.

Q. And one other point that I think may need clarification. When you say "picket," you mean walking up and down in front of the plant?

A. That's it.

Q. And do you allow people to picket in front of a plant, or do you require that they picket a plant by walking up and down a block or two blocks away?

A. I allow them to walk in front of the plant.

Q. Right in front of the plant?

A. Up and down in front of that plant.

Q. And if your police at times have insisted that the workers must walk up and down in a block or two blocks removed, instead of in front of a plant, that is not consistent with your orders?

A. No, I don't keep them away if the plant is on strike; they got a perfect right to picket it; I don't stop them.

Q. Commissioner, in your clipping files somewhere, not offered in evidence by the counsel for Jersey City, did you find statements issued to the press by me denying the report in the *Jersey Journal* that in any way I was urging the use of machine guns? Did you find any statement of denial on my part?

A. No, I didn't say you were urging the use of them.

Q. You didn't?

A. I didn't say that.

Q. Did you see any clippings indicating that I was fearful that Mayor Hague would next use machine guns? Just did you see the clippings?

A. No, I——

MR. MATTHEWS: If your Honor please, I read a clipping to him in which Mr. Ernst explained in two different ways his speech at Washington.

MR. ERNST: No, no.

MR. MATTHEWS: One of which was that Mayor Hague might resort to machine guns.

MR. ERNST: There is no such evidence at all, nothing that I explained. He introduced two clippings which purported to quote me as explaining it two different ways. Now both of the reporters couldn't have been right.

MR. MATTHEWS: And one of them must have been, and either one, it seems, condemns the statement.

A. What was that question?

Q. The question was, did you in your mass of clippings or do you now recall in your mass of clippings if you found statements indicating that I was fearful that if Frank Hague continued his processes he would next bring machine guns on the streets? Don't you remember statements like that on my part, quoted in the newspapers?

A. Well, to tell you offhand, I have read statements to that effect, but I couldn't tell you just what the direct wording is.

Q. No, to that effect.

MR. ERNST: That is all, your Honor.

RE-CROSS-EXAMINATION.

By MR. MATTHEWS:

Q. Just a minute before you leave the stand. I show you a picture with the caption "Congressman Jerry O'Connell with Communist Herbert Benjamin and Socialist David Lasser conferring on possible action against Mayor Hague of New Jersey."

Did you hand me that yesterday?

A. I did.

THE COURT: What is that magazine?

MR. MATTHEWS: That is from the National Republic, "A Magazine of Fundamental Americanism" is the caption of it. The baldheaded one is Jerry.

MR. ERNST: May I just ask that the date of the issue be indicated, June, 1938.

MR. MATTHEWS: May I have it marked for identification? The case is being tried today.

(Marked Exhibit D-9 for identification.)

MR. MATTHEWS: I am finished.

MR. ERNST: If your Honor please, there is another question that we can save time, instead of calling another witness, which Mr. Casey may be able to answer. We may be able to avoid calling the chief of police and if counsel objects we will have to call the chief of police.

I ask Mr. Casey if he has seen the *Newark Ledger* of Wednesday, June 8, 1938, with particular reference to an item called "CIO Invasion; Hague's Kin Tells Story."

MR. MATTHEWS: I object to that as absolutely incompetent in this issue.

MR. ERNST: Just whether he saw it.

THE WITNESS: Do you mind if I read it?

MR. MATTHEWS: No, no, you don't need to read it. Did you see it?

MR. ERNST: He may want to read it to see if he saw it.

THE WITNESS: I did not see the *Ledger*. I very seldom see the *Ledger*.

MR. MATTHEWS: Very seldom reads the *Ledger*, he says.

Q. Do you recall seeing a statement printed Wednesday in various papers quoting Frank H. Eggers?

MR. MATTHEWS: I object to that, an attempt to write into this record what is in the *Newark Ledger*. I ask it be proved properly. He says he didn't see the paper. I object.

THE COURT: Sustained.

Q. Do you know of a threat made by Frank H. Eggers?

MR. MATTHEWS: I object, if your Honor please, to any statement of this kind.

Q. (Continuing.) To CIO organizers and workers?

MR. MATTHEWS: I object.

A. No, I don't.

MR. ERNST: He can answer if he knows of a threat.

THE COURT: He says he didn't know.

Q. You don't know about it?
A. I don't know about it.
Q. All right, that's all.

MR. MATTHEWS: That's all. Thank you, Mr. Casey.

MARY PADLA, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. ERNST:

Q. Where are you employed?

A. Restful Footwear.

Q. Whereabouts is that?

A. Wilkinson Avenue.

Q. Is that a union shop?

A. Yes.

Q. And how much are you receiving by way of compensation there?

MR. MATTHEWS: I object as immaterial to this issue. I object. It is immaterial what this girl gets.

THE COURT: Where does she work?

MR. MATTHEWS: Restful Footwear Company in Jersey City.

THE COURT: What is the ground of the objection?

MR. MATTHEWS: The ground is it is immaterial to this issue.

THE COURT: I heard you.

MR. MATTHEWS: I am sorry. I thought you asked me what the ground is.

THE COURT: I did. I understood one of the issues was in regard to what are called the organizational activities of labor that took place in Jersey City. That is one of the issues.

MR. MATTHEWS: I don't take it so. I read the bill very carefully last night, having in mind even whether there might be equitable relief granted, and as I read it I find that these different organizations have summoned the Civil Liberties Union to protect them in the right of free speech.

THE COURT: That isn't the sole issue, there are several issues. One of the issues is organizational activities on the part of the labor unions, nothing to do with Civil Liberties Union.

MR. MATTHEWS: Well, of course, the Civil Liberties Union is the one that comes along to help them. I think it is immaterial to the issue. I want my objection on the record.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. How much do you receive?
A. $14 a week.
Q. For how many hours' work?
A. Eight hours' work.
Q. Before you were employed by the Restful Footwear where were you employed?
A. Inter-Allied.

THE COURT: What is that?

THE WITNESS: It is the Inter-Allied Slipper place.

THE COURT: Whereabouts?

THE WITNESS: Harborside Building.

Q. Was that a union shop?
A. No.
Q. How much did you receive when you were employed by the Inter-Allied?
A. Well, I started with $8.
Q. And for how many hours a week was that?
A. Eight hours a week.
Q. How old are you?
A. Nineteen.
Q. How long have you been working, or how long have you been with the Restful Footwear?

A. A year.

Q. How long were you with the Inter-Allied before that?

A. A year and a half.

Q. I think you said eight hours a week; you mean a day?

A. Eight hours a week.

THE COURT: No, she means eight hours a day.

Q. How many days do you work there?

A. Five days.

Q. Off on Saturdays?

A. In the Restful Footwear.

Q. Yes. When you were with the Inter-Allied what were your hours?

A. My hours were from 8 to 7, sometimes till 8 o'clock at night.

MR. MATTHEWS: No questions.

THE COURT: May I ask what is the nature of your work, what do you do?

THE WITNESS: Packer.

THE COURT: Pack the slippers?

THE WITNESS: Pack the slippers.

THE COURT: What is the name of your employer, do you remember?

THE WITNESS: Down at Inter-Allied?

THE COURT: Where you are working now, which is the Restful Footwear. What is the name of your employer?

THE WITNESS: I don't remember.

THE COURT: You don't remember. Do you remember the name of anybody in the place, I mean any foreman or something?

THE WITNESS: No, I don't remember.

By MR. FRAZER:

Q. What was the name of the boss, do you know?

A. No, I don't remember.

Q. How many girls were there working in that shop of the Inter-Allied Slipper Company?

A. I couldn't tell you.

Q. You don't know approximately how many were there?

A. No.

Q. That is all.

MR. MATTHEWS: That is all, no questions.

JEAN PALMIERI, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. ERNST:

Q. Where do you work, Jean?

A. I work in the Norwalk Slipper Company.

Q. In Jersey City?

A. Yes.

Q. Is that a union shop?

A. Yes.

Q. What union?

A. CIO.

MR. MATTHEWS: What is it?

THE WITNESS: CIO.

Q. How long have you been working there?

A. About a year.

Q. And before you worked there where did you work?

A. I worked in the Uneeda and Inter-Allied Slipper Company.

Q. And what are your wages now where you are working?

A. $12.50 a week.

Q. When you were working with the——

MR. MATTHEWS: Pardon me, did I now understand that she is getting as a CIO worker——

MR. FRAZER: $12.50.

Q. What are your hours now?

A. From 8 to 5.

Q. And when you were working for the Uneeda Slipper Company what were your wages?

A. Uneeda, I got $8 a week there, 20 cents an hour.

Q. What were your actual hours?

A. From 8 to 5, on Saturdays from 8 to 12, forty-four hours a week.

Q. Did you ever work at any time beyond those hours?

A. Yes.

Q. What time did the shop close up, the Uneeda?

A. The Uneeda closed up about 3 o'clock on Saturdays; that is about the latest I worked.

Q. What about the other days of the week?

A. Sundays.

Q. Do they work Sundays?

A. Yes—I didn't work on Sundays.

Q. You didn't work on Sundays, but they did run the shop on Sundays?

A. Yes.

Q. Did the fact that you didn't work on Sunday have any effect upon your employment there?

A. Certainly, I was fired.

Q. You were fired for not working?

A. That is, in the Inter-Allied.

Q. What about the other place?

A. I worked fifty, fifty-five hours a week, 7 and 8 o'clock at night.

THE COURT: Dean Frazer, let's get these various shops more definite; I am a little confused about it.

MR. MATTHEWS: You may want it for your own self. I am not interested even. I have no objection.

THE COURT: I think it should show. You first worked where?

THE WITNESS: First, Inter-Allied.

THE COURT: And is that where you were asked to work on Sunday and were fired?

THE WITNESS: Yes, that's the one.

THE COURT: I see. Are they still in business?

THE WITNESS: Sure.

THE COURT: Who was the boss there?

THE WITNESS: Mr. Goldman.

THE COURT: Do you remember his first name?

THE WITNESS: Al,-I am not sure, though.

THE COURT: And then you went from there to the Uneeda, is that right?

THE WITNESS: Yes.

THE COURT: And the same wages?

THE WITNESS: Yes, 20 cents an hour.

THE COURT: And then from there you went to——

THE WITNESS: To the Norwalk.

THE COURT: Where you are now employed?

THE WITNESS: Yes.

By MR. FRAZER:

Q. Both the Uneeda and the Inter-Allied were non-union shops, is that right?

A. Yes.

Q. That is all.

MR. MATTHEWS: No questions.

LILA ROCCO, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Where do you work?

A. Louis Bender.

Q. Where is that?

A. Harborside Building.

Q. Is that a union shop?

A. Yes.

Q. And what is the business, what do they make there?

A. Pyjamas.

Q. How long has that been a union shop?

A. Well, it isn't quite a year.

Q. And did you work there before it became union?

A. Yes.

Q. What did you receive before it was a union shop for a forty-hour week?

A. $9; forty-four hours a week.

Q. For forty-four hours; and what do you receive now?

A. $14.

Q. For how many hours?

A. Forty.

THE COURT: Did she say what union?

Q. What union is it?

A. The A. F. of L.

Q. Is that the International Ladies Garment Workers?

A. Yes, sir.

Q. Now, did you ever work in any other shops in Jersey City before?

A. Yes, La Paree in the Harborside Building.

Q. And what do they do?

A. They do undergarments.

Q. What did you get there, what are yours there?

A. The hours were from 8:30 in the morning till 6 at night.

Q. Any overtime at times?

A. Well, he usually had girls working on Saturdays for him?

Q. Until how late?

THE COURT: What is the name of this one?

MR. FRAZER: La Paree.

Q. That is spelled L-a P-a-r-e-e, I think.

A. Yes.

THE COURT: What do they make?

THE WITNESS: Undergarments.

THE COURT: Also. No, the others made pyjamas, is that right?

THE WITNESS: Yes.

MR. FRAZER: Cross-examine.

MR. MATTHEWS: No questions.

THE COURT: Did she give her wages at La Paree?

MR. FRAZER: Pardon me?

THE COURT: Did she give her wages there?

MR. FRAZER: I don't know that she did.

MR. MATTHEWS: What did you get at La Paree?

THE WITNESS: Well, it was piece work there.

THE COURT: What did you average there?

THE WITNESS: $12 or $13.

By MR. FRAZER:

Q. You are not on piece work any more?

A. No.

GRACE PECORE, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Now, Grace, where do you work?

A. I am not working at the present time.

Q. You are not working. Where was the last place you worked?

A. Sam Seham.

THE COURT: What is his address?

THE WITNESS: 31 Wilkinson Avenue.

Q. 31 Wilkinson Avenue. That is Jersey City?

A. Jersey City.

Q. And they are out of business now, is that it?

A. That's right.

Q. Was that a union shop?

A. No, it wasn't.

Q. And how much did you get there, Grace?

A. Well, I was making $16 until they cut us; the last time I was making $14.

Q. Was there any effort made to unionize that shop?

A. Yes, there was.

Q. And when you first went there how long ago was that?

A. When I first went there?

Q. Yes.

A. When I first started working?

Q. Yes.

A. Five years ago.

Q. And how much did you get then when you first went there before they started any union activity?

A. $6 a week.

Q. For how many hours?

A. Forty hours.

THE COURT: Who made the effort, Dean Frazer?

MR. FRAZER: To unionize?

Q. Who did make the effort to unionize?

A. The fellows that work there first started it.

Q. And were you approached on the unionization?

A. Yes, I was.

Q. Did the boss learn anything about your relations to the union?

MR. MATTHEWS: I object, that is not competent. What union was it?

THE WITNESS: A. F. L.

Q. That is the International Ladies Garments Union?

MR. MATTHEWS: American Federation of Labor, the A. F. L.

MR. FRAZER: But I wanted specifically the local union. American Federation of Labor is a generic term.

MR. MATTHEWS: Oh, indeed, I well know it.

Q. Did your boss ever speak to you in relation to the union activities there?

A. Yes.

Q. Did you work Saturday mornings ordinarily?

A. Sometimes when we were busy.

Q. Did he request you to come down Saturday morning to meet any member of the Jersey City police force?

A. Yes, he did.

Q. And who was that?

A. That was Captain Drewen of the Jersey City police.

Q. And did you meet Captain Drewen?

A. I did.

Q. And what was the subject of your conversation with Captain Drewen?

MR. MATTHEWS: I object, if your Honor please.

THE COURT: Unless it relates to this issue of unionization.

MR. FRAZER: Well, it does relate to the issue of unionization.

Q. Did it relate to unionization?

A. Yes.

MR. MATTHEWS: Just a minute, your Honor please. You cannot lug testimony in this way. This is not only not fair but it is not legal or competent. That is not the way to prove this allegation. This girl is not working.

THE COURT: What is that last?

MR. MATTHEWS: This girl is not working.

THE COURT: No, not now. You may answer.

MR. MATTHEWS: I object to the proof as incompetent.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. What is that question?

Q. Was it in relation to union activity that Captain Drewen spoke to you?

A. Yes, it was.

Q. And what did he want to know from you?

MR. MATTHEWS: I object, if your Honor please, as hearsay.

THE COURT: I think that is hearsay.

MR. FRAZER: Very well. May I have an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

CROSS-EXAMINATION.

By MR. MATTHEWS:

Q. Who brought you here today?

A. Mr. Frazer.

Q. Mr. Frazer. When did you first meet Mr. Frazer?

A. The first time I met him was when I signed the affidavit.

Q. When was that?

A. I don't remember the date.

Q. Who brought you to his office?

A. The organizer.

Q. What organizer, what is his name?

A. Jerry.

Q. Not Jerry O'Connell?

A. No, not Jerry O'Connell.

Q. No. Jerry who, is Jerry in Court, do you see him?

A. No, he is not here.

Q. Who else besides Jerry?

A. Josie: I don't know her last name.

MR. MATTHEWS: Is Josie in court?

MR. FRAZER: Yes, Josie del Veccio.

MR. MATTHEWS: Will Josie del Veccio stand up, please?

Q. Is that the girl?

A. Yes.

Q. And when did Josie and Jerry bring you to Mr. Frazer's office to make the affidavit?

A. I don't remember the date; that is quite a while ago now.

Q. How long have you known Jerry?

A. About a year, I would say.

Q. And where did you meet Jerry?

MR. FRAZER: I object, not proper cross-examination when she met Jerry.

MR. MATTHEWS: I have a right to test the credibility of this witness.

A. I first met Jerry in the union office in Bayonne.

Q. In the union office in Bayonne. And when was that that you met Jerry in the union office in Bayonne?

MR. FRAZER: I object, wholly immaterial to this examination.

THE COURT: I think it is.

MR. MATTHEWS: Why, this is cross-examination. If they are going to trot on a lot of youngsters on this stand to make statements and don't allow us to press into the origin of their testimony, that is denying these defendants, who are municipal authorities in the second largest city in this state, their rights, and the essence of this cause seems to be rights for the public; why not rights for the public officials?

THE COURT: Go ahead.

(Question repeated by the reporter.)

A. I don't remember when I met him.

Q. Well, how did you come to meet Jerry, did he go looking for you or did you go looking for him?

A. No, he didn't look for me.

THE COURT: I want to protect her, Mr. Matthews. She is a young girl. She told us that this organizer, who I suppose will be called, took her there, is that right?

THE WITNESS: A clerk in the office took me up to the office, that he wanted to see me and talk to me.

Q. Were you home then or working?

A. I was working then.

Q. How long are you not working?

A. Five weeks.

Q. How long is it since the shop folded up?
A. Five weeks.
A. That is all.

THE COURT: Ten minute recess.

(Recess.)

(Following a short recess.)

THE COURT: Go ahead, Dean Frazer.

MR. FRAZER: Miss Opitz.

DOROTHY OPITZ, called and sworn as a witness on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Miss Opitz, where are you employed?
A. William J. Egan's office.
Q. Where is that?
A. 1132 Raymond Boulevard.
Q. Newark?
A. Newark.
Q. And that is a law office?
A. It is.
Q. And were you so employed on Saturday, the 4th of June?
A. I was.
Q. Of this year?
A. Yes, sir.
Q. What time did you get to the office that morning?

MR. MATTHEWS: I object, if your Honor please. This is entirely irrelevant to this issue.

THE COURT: Well, I don't know anything about it yet.

MR. MATTHEWS: Well, I think the purpose of the testimony ought to be stated to the Court before the

record is encumbered with something that may not have relevance to this issue.

THE COURT: Well, certainly what time she got to the office cannot hurt anybody.

MR. MATTHEWS: Well, that is true.

MR. FRAZER: I am perfectly willing to state the purpose if the Court wishes me to.

THE COURT: Mr. Matthews seems to want you to.

MR. MATTHEWS: Only if the purpose is relevant to this issue, your Honor.

THE COURT: In the meantime, let her say what time she got to the office. That will probably be in her favor.

A. About nine o'clock.
Q. And Mr. Egan was there or not, at the time?
A. He was not there.
Q. He didn't get in until later?
A. That is right.
Q. About twelve o'clock?
A. Approximately.
Q. When he came in did he come in in company with others?

MR. MATTHEWS: I object as immaterial to this issue.

THE COURT: Well, I am in the dark about it, Mr. Matthews.

MR. MATTHEWS: I wouldn't be, though, if your Honor pleases. I don't think we ought to be in the dark.

THE COURT: I say I am now.

MR. MATTHEWS: Yes, so are we all. Well, not altogether in the dark, but at the same time I think your Honor ought to insist that this matter be relevant to the issue.

Q. When he did come in, did he come in in the company of other people?

MR. MATTHEWS: I object, if your Honor please, that this question is irrelevant. I would like a ruling on it, please.

THE COURT: Will you state the purpose of the testimony?

MR. FRAZER: Yes, sir.

MR. MATTHEWS: Now Mr. Ernst has just said to Mr. Frazer: "Go to it, spill it." Now, if your Honor pleases, that is no remark from counsel, and there should be no "going to it" and "spilling it" about anything that is irrelevant to this issue.

THE COURT: I didn't hear it.

MR. MATTHEWS: I know you didn't, your Honor. I have assisted you in hearing it.

MR. ERNST: If your Honor please——

MR. FRAZER: It seems to me that counsel might be better engaged at his own table and not overhearing remarks facetious or otherwise between counsel at my table.

MR. MATTHEWS: If that is a facetious remark, if your Honor pleases, I will allow your Honor to say whether it is or not, in this court, a dignified United States District Court for New Jersey, "spill it," "go to it."

MR. FRAZER: Do you wish——

MR. MATTHEWS: If that is the way this case is in their minds, if your Honor pleases, it isn't in mine. I am taking my position seriously in this matter, and I want to object that this question, this testimony, is irrelevant to the issue.

MR. FRAZER: Well I understand that Sir John has called upon me for a statement of my position in the matter.

MR. MATTHEWS: No, I have not. The Court said state the reason for your question.

MR. FRAZER: The purpose of these witnesses, and there are a number of them, is to continue the proof of conspiracy on the part of the Jersey City authorities, of which we have offered evidence in the matter of the O'Connell meeting, the Thomas appearance, and similar episodes. We believe that there is clear evidence that under direction from the authorities of Jersey City through the instrumentality of Mr. William J. Egan, a member of the bar of New Jersey, whose office is in this city, there was a meeting of persons on Saturday, June 4, 1938, for the purpose of fomenting an attack upon Mr. Thomas——

MR. MATTHEWS: I object now, if your Honor please.

MR. FRAZER: When he——

MR. MATTHEWS: I object. This man Thomas has been running around this part of the country seeking publicity, and now he is using this Court for it, and the allegations made by counsel, if your Honor pleases, are made solely in order to give scenery to this case. What in the world can anything that was done, if it was done, on last Saturday, have to do with the matters in this complaint? That to my mind, sir, shows the true picture in this case. This is an attempt on the part of these fellows to advertise these reactionaries, and this Court ought not to be allowed to be used for that purpose, Judge Clark; I say it respecting you deeply, and this court.

MR. FRAZER: If counsel——

MR. MATTHEWS: Such truck as that to be brought in, that there was a meeting on the seventh or eighth

of June! There is nothing alleged in that complaint that warrants that testimony, nothing whatsoever, under the law of man.

MR. FRAZER: I might call the Court's attention to the fact that Mr. Matthews himself recently offered as evidence in the case a magazine published in June, 1938.

MR. MATTHEWS: And to my surprise you did not object to it. Now I object to it. I offered that magazine, however, as cross-examination of a witness produced by them of whom they asked, "How did you know that Jerry O'Connell was a Communist?" And I showed them.

MR. FRAZER: Now if counsel has finished his interruption of my statement——

MR. MATTHEWS: It isn't an interruption of your statement. It is an objection.

MR. FRAZER: Of my offer, I will go on to say that I believe that we will be able to submit to this Court by those who attended at Mr. Egan's office——

MR. MATTHEWS: Now I object to this statement, if your Honor pleases.

MR. FRAZER: By the——

MR. MATTHEWS: I object.

MR. FRAZER: By the——

THE COURT: Well, I suppose counsel is entitled to show the purpose—on either side.

MR. FRAZER: By the summoning or the subpœnaing of the records of the telephone company to indicate the communications which took place between the offices, all leading up in the first place to the so-called protest filed, I think, by Mr. Michael Breitkopf and a

group of associates with the chief of police of Newark against the Thomas meeting, and culminating in one of the most disorderly mob attacks upon a person authorized under license of the City of Newark to speak in public at Military Park.

MR. MATTHEWS: Again I say——

MR. FRAZER: I wish to show those facts as part of the conspiracy to prevent free speech in these communities.

MR. MATTHEWS: Again I say——

MR. FRAZER: Through the Jersey City authorities, the defendants.

MR. MATTHEWS: I again say it is irrelevant to this issue and highly improper, and that the statement should be stricken from the record.

MR. FRAZER: We expect to tie it up with the defendants.

MR. MATTHEWS: Oh, if your Honor pleases, that is not an answer to my objection. For your Honor to allow anything like that in this case, with respect, I say it to this Court, would be simply giving an opportunity to many of these people to wash their dirty linen in this august federal court.

MR. FRAZER: I desire to show that the defense says in this case it has been continuously put to the necessity of answering protests. I wish to show now that these protests are largely fomented as part of the conspiracy.

MR. MATTHEWS: If your Honor please, the complaint does not envision, purview or remotely refer nor warrant under the law any such testimony, and I can't say it too seriously on this record.

THE COURT: It would seem to me, Dean Frazer, as I ruled before, that this is a matter of rebuttal rather than of original case. I will sustain the objection.

MR. MATTHEWS: Thank you.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: Now, may I have stricken from the record the purpose?

THE COURT: Well, it is not my practice, Mr. Matthews, to strike from the record statements of counsel.

MR. MATTHEWS: Except, if your Honor please, that it reflects upon a member of the bar of this court, whom I am sure you wouldn't want to have reflected on unless there was some evidence brought, and since it is not relevant at this time and might be, as your Honor says, in rebuttal, though I don't know, it does seem to me for his sake that that should be stricken from the record.

MR. FRAZER: I would like once more to urge upon the Court the fact that this is not offered by way of rebuttal but as affirmative proof of conspiracy, which I feel we have a right to put in at this time.

THE COURT: You have your exception.

MR. FRAZER: All right. That is all.

MR. MATTHEWS: No questions. Thank you.

Dr. Webber.

(Witness excused.)

REVEREND CHARLES C. WEBBER, called and sworn as a witness on behalf of the plaintiffs, testified as follows:

THE WITNESS: The "Doctor" is not correct. I do not hold a doctor's degree.

MR. FRAZER: Might I ask for the purposes of the record to have noted that I have subpœnaed certain persons for this purpose?

THE COURT: Certainly.

MR. FRAZER: There is Miss Opitz, Miss Kasen—what is your full name?

MISS KASEN: Jeannette Kasen.

MR. FRAZER: Jeannette Kasen, William Hildebrand, Jr., and Robert L. Hood; and might I ask that any stenographic note books which were brought down at this time in response to the subpœna, be marked as an exhibit for identication?

MR. MATTHEWS: I object, if your Honor pleases. That is casting a reflection—more than that—upon the office of a member of this bar, and there is no right in law to mark for identification anything brought by a witness when the witnesses are not used.

THE COURT: Well, I don't see what the fact that a person is a member of the bar has to do with it.

MR. FRAZER: I am trying to——

MR. MATTHEWS: It may mean nothing to your Honor, I hold no brief for any member of the bar. I try to hold one for myself, and that's difficult.

MR. FRAZER: It seems to me if there is no basis for reflection, there can be no objection to having the books marked for identification.

MR. MATTHEWS: The objection is legal. You can't mark for identification what is not part of the case.

THE COURT: Will you state the reason for that request, Dean Frazer, please?

MR. FRAZER: Because your Honor has ruled, contrary to my offer, that I may not produce the witnesses. I have subpœnaed them duces tecum to produce notes which were taken during the course of the meeting which I had hoped to prove. I want to be assured that if your Honor subsequently holds that this is proper rebuttal, I may have those notes in their integrity without being destroyed, without being altered. I want to know where they are and have them available.

MR. MATTHEWS: There are several rights under the Constitution, and one is to property. I daresay that in protecting free speech your Honor won't infringe upon property rights. That would be an objection too.

THE COURT: Will you ask the witnesses if they have any notes?

MR. FRAZER: Have you any notes with you, either of you ladies?

(The persons addressed both answered in the affirmative.)

MR. FRAZER: They both say that they have.

THE COURT: Ask them what they are about.

MR. MATTHEWS: Oh, if your Honor please——

THE COURT: Not as to their contents.

MR. FRAZER: Would you step down, Dr. Webber, please?

(The witness withdrew.)

MR FRAZER: Might I call Miss Opitz back——

THE COURT: Yes.

MR. FRAZER:—for the purpose of those questions?

MR. MATTHEWS: If your Honor please, I have made an objection to such questions, and your Honor has ruled that the testimony is incompetent.

THE COURT: I am not going to allow it at this time, Mr. Matthews.

DOROTHY OPITZ, recalled.

By MR. FRAZER:

Q. Miss Opitz, on June 4, 1938, did you take any notes in your capacity as secretary——

MR. MATTHEWS: I object, if your Honor please.

Q. (Continuing.)—or stenographer.

THE COURT: You may answer. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.) (Seal)

Q. Did you?

A. I did.

Q. And have you those notes with you?

A. I have.

Q. And what is the general subject matter of the notes?

MR. MATTHEWS: I object, if your Honor pleases, as irrelevant to this issue.

THE COURT: Well, you can't get the evidence, Dean Frazer, that way.

Were those notes taken in your own stenographic symbols?

THE WITNESS: Yes, they were.

THE COURT: Are they long?

THE WITNESS: Well, just a few pages long.

THE COURT: I assume that the young lady will not alter or destroy the notes.

MR. MATTHEWS: Certainly not, your Honor. You will produce them if the Court orders, as they are now, won't you, Miss?

THE WITNESS: Yes.

MR. MATTHEWS: And yourself, too?

THE WITNESS: Yes.

THE COURT: All right.

MR. FRAZER: They may not be marked for identification, sir?

THE COURT: No, I think that would be improper.

MR. FRAZER: May I ask Miss Kasen to testify to the same effect?

THE COURT: Yes, certainly.

MR. MATTHEWS: Can't it be stipulated that she has some notes and that she will produce them if the Court orders her to produce them, as they are, unaltered?

THE COURT: Yes. Are they of the same occasion?

MR. MATTHEWS: Notes made on last Saturday, was it, Miss?

MISS KASEN: Yes.

MR. MATTHEWS: And you will produce them for the Court unaltered as they are now, if you are asked to do so?

MISS KASEN: Yes.

MR. MATTHEWS: All right. Thank you.

THE COURT: And at the same time that the other young lady testifies?

MISS KASEN: Yes.

THE COURT: You were both taking notes, were you?

MISS KASEN: Not at the same moment, the same day.

THE COURT: In succession too?

MISS KASEN: No, they weren't in succession too.

THE COURT: In other words, did you come in and relieve the other.

MISS KASEN: No.

THE COURT: Was it another time later in the day?

MISS KASEN: No, it was about the same time, but dictated by different people.

THE COURT: What?

MR. MATTHEWS: Dictated by different people.

THE COURT: I see.

MR. MATTHEWS: All right, Miss. Thank you.

MR. FRAZER: I would also like to note that I have subpoenaed the records of the Telephone Company and who else—we have issued subpoenas——

MR. MATTHEWS: Now, that is immaterial for this record, what they have done in the preparation of their case.

MR. FRAZER: For attendance today.

MR. MATTHEWS: I object, if your Honor please.

THE COURT: I suppose they have a right to show their offer because they have an exception to my refusal to admit it.

MR. MATTHEWS: Your Honor will allow me an exception to this statement by counsel?

(Which exception is hereby allowed and sealed accordingly.) (Sealed)

MR. FRAZER: We have issued subpœnas against William J. Egan and learn he is not available: Mr. Michael Breitkopf, Judge Felix Fortenza, Mr. Herman Kapp, Mr. Louis Freeman, Mr. Daniel McGee and Mr. Edward Reilly, and I would offer the testimony of all of those witnesses as part of my offer.

MR. MATTHEWS: Oh, I object to that. These men are here, I suppose.

THE COURT: You object to the testimony though, Mr. Matthews.

MR. MATTHEWS: Oh, I could hardly say the word "object." I can hardly imagine this Court is going to tolerate much longer this parade pro Thomas.

MR. FRAZER: I understand that your ruling would exclude the testimony of any of those witnesses at this time.

THE COURT: That is correct.

MR. FRAZER: And for that reason I would ask an exception to the overruling of my offer and to be permitted to excuse them from attendance in response to the subpœna at this time but I trust that the subpœna may be considered as still effective for rebuttal purposes, that they are still under orders of the Court to appear here when duly notified.

(Plaintiff's counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

CHARLES C. WEBBER, resumed.

DIRECT EXAMINATION (Continued).

By MR. FRAZER:

Q. Dr. Webber, have you given your name and address to the stenographer already?

A. I did not give my address.

Q. Will you do so then?

A. My office address is 150 Fifth Avenue, New York City.

Q. And what is your work?

A. I am the secretary of the Methodist Federation for Social Service, a national organization, with Bishop Francis J. McConnell as its president. I am also a Methodist minister in good and regular standing, a member of the New York East Annual Conference of the Methodist Church.

Q. Now, on the evening of May 7, 1938, did you have occasion to go to Jersey City at Journal Square?

A. I did.

Q. Will you state what you did and what you observed on that occasion?

A. I arrived in Jersey City around about 5:30 on the afternoon of May the 7th. I had my evening meal in one of the restaurants just off the square and then I observed a gathering of the people in Journal Square and the police officers, and then I conferred with the newspaper men relative to the situation, and at around about eight o'clock that evening, as I recall it, I was standing with a small group of newspaper men just off the curb in Journal Square when I observed a man by the name of Mr. Timothy O'Brien, of the Catholic Union of the Unemployed, passing out leaflets of a yellow character about letterhead size. I saw a police officer take the leaflets out of the hands of Mr. O'Brien and then disappear in the group on the sidewalk.

Q. Now, may I show you a leaflet here and ask you whether you can identify it—this is marked Exhibit P-7—and ask you whether that is the leaflet to which you had reference?

A. I have here, counsel, a copy of the leaflet and if I may compare it——

Q. Yes, surely.

A. —that is the same leaflet. I observed Mr. Timothy O'Brien, of the Catholic Union of the Unemployed, passing out leaflets of that character and then I saw a police officer take the leaflets out of Mr. O'Brien's hands and then move on into the crowd on the sidewalk. Mr. O'Brien then stepped down off from the curb and came out to the little group of newspaper men and as he did so the crowd around gathered about the newspaper men. Mr. O'Brien told his story to the newspaper men and after he had finished his preliminary statement a man who had pushed his way in and was standing at Mr. O'Brien's left asked Mr. O'Brien——

MR. MATTHEWS: No, I object, if your Honor please, as hearsay.

MR. FRAZER: The general res gestae of the evening.

THE COURT: I have already ruled on that. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: Well, I haven't objected on this record and I want to state my reasons. Here comes a man into this courtroom and relates an occurrence covering a period of hours and then seeks to relate a conversation between two people, one of whom allegedly was a stranger. If that is according to the rules of evidence then indeed this Federal Court must have different rules than I studied. I object to it on the ground it is hearsay.

THE COURT: You may have an exception.

MR. MATTHEWS: I want an exception, please, sir.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. You may answer.

A. This gentleman asked Mr. O'Brien if he had any more of the circulars——

MR. MATTHEWS: I object because this man is not identified.

THE COURT: It is not offered for the purpose of identification; it is to show the distribution of circulars.

MR. MATTHEWS: The conversation is between a man who is not identified. How do we know but it might be one of their own? What right have we to be bound by that, Judge Clark, please?

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. (Continuing.) This gentleman asked Mr. O'Brien if he had any more of the circulars and when Mr. O'Brien produced some from underneath his vest this gentleman seized the leaflets and immediately disappeared in the encircling group. A moment or two after that a group of young men, I would judge between the ages of eighteen to twenty-four, athletic type, charged into the group of newspaper men, of which Mr. O'Brien and I were a part, and charging into us we were split apart in the melee, and I found myself a moment after that alongside of police officer, uniformed officer No. 947.

Q. May I ask whether any effort was made on the part of the police there to stop that rushing that you just described?

A. None whatever. As I found myself alongside of police officer No. 947 one of the young men who had charged

into the group, struck a man and I asked police officer 947—(interrupted)

MR. MATTHEWS: I object on the ground that it is hearsay.

MR. FRAZER: Oh, no, it is not hearsay.

MR. MATTHEWS: I object on the ground that it is hearsay.

THE COURT: I heard you. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. (Continuing.) I asked police officer No. 947 to arrest the assailant. He refused pointblank. I reported the episode to the newspaper men. One of the newspaper men said to me, "Reverend, you had better——"

MR. MATTHEWS: I object to what the newspaper man said to him.

THE COURT: I sustain that.

MR. FRAZER: Exception, please.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Go ahead.

A. A short time after that a group of young people gathered at one end of the square in the midst of the multitude that had assembled there and they started singing "My Country 'tis of Thee, Sweet Land of Liberty." At the close of the first verse they shouted "Hurrah for O'Connell and Bernard." Then they were brushed aside and forced to go out into the rest of the group because of the fact that once more a group of persons forced their way into their midst and compelled them to break up their group.

Q. Were there any police around at that time?

A. I didn't see a policeman in that immediate situation at that part of the square. Of course, there were police in other parts of the square.

Q. How many, were they numerous or few?

A. At that particular time I cannot give you a judgment as to how many there were. I would judge—this is purely an estimate—that in the square at that time there were approximately one hundred policemen.

Q. Now, did anything else happen that you saw there?

A. About eleven o'clock that night a man was knocked to the ground and the assailant fled past me. He was taken by officers into a nearby store.

Q. Who, the one fleeing?

A. No, the man who was injured.

Q. What happened to the one who was fleeing?

A. He escaped into the group, into the surrounding group.

Q. Any effort made to arrest him?

A. I did not observe any.

Q. What happened then?

A. I stayed until about 11:30 and then returned to my home.

MR. MATTHEWS: No questions.

MR. FRAZER: Your Honor, I had supposed that a number of witnesses whom I have produced would be able to go right on with my proof but in view of your Honor's ruling I am temporarily out of witnesses.

THE COURT: Could we adjourn at this time to quarter of two?

MR. MATTHEWS: Could we have an extra ten minutes this noon?

THE COURT: Two o'clock, Dean Frazer, two o'clock.

(Recess.)

AFTERNOON SESSION.

THE COURT: Are you going on, gentlemen? Have you some more witnesses?

MR. FRAZER: I have Mr. Macri.

THE COURT: All right.

SAMUEL MACRI, called and sworn as a witness on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mr. Macri, you are associated with the Committee for Industrial Organization?

A. I am the assistant regional director of the Committee for Industrial Organization.

Q. And are you a member of any union yourself?

A. Yes, I am a member of the United Textile Workers of America.

Q. Will you speak a little louder?

THE COURT: A little louder, please.

Q. Do you know whether the United Electrical Radio and Machine Workers of America are associated or affiliated with the committee?

A. They are affiliated with the Committee for Industrial Organization.

THE COURT: Let me ask you, Mr. Macri, for all of our convenience, have you got a table, some printed document or typewritten document, giving the set-up of the CIO, what unions belong and all that?

THE WITNESS: The only way I could give you that, your Honor, would be through our office.

THE COURT: Well, could your office get one and have it put in the record?

THE WITNESS: I believe that we can do that.

THE COURT: So we would know more about it—just merely for convenience, not as evidence.

Q. You, yourself, are one of the plaintiffs in this cause, are you not?

A. That is right.

Q. And is the United Rubber Workers of America, one of the plaintiffs, also affiliated with the CIO?

A. They are affiliated with the CIO.

THE COURT: You are a garment worker, you say?

THE WITNESS: No, textile.

THE COURT: Oh, I beg your pardon. What is that? "Textile" is a broad word.

THE WITNESS: Well, I formerly worked in the silk mills.

THE COURT: Where?

THE WITNESS: In Allentown, Pa.

THE COURT: Making rayon or making silk?

THE WITNESS: Silk.

THE COURT: Weaving silk?

THE WITNESS: Weaving silk.

Q. Where were you on June 1st when this trial commenced, Mr. Macri?

A. June the 1st?

Q. Yes.

A. I was in the hospital.

Q. What hospital?

A. Beth Israel.

THE COURT: Did you say how you came to New Jersey from Allentown, Mr. Macri?

THE WITNESS: How I came from Allentown to New Jersey?

THE COURT: Yes.

THE WITNESS: I was assigned to New Jersey.

THE COURT: By whom?

THE WITNESS: By John L. Lewis.

THE COURT: You were working actually in the mill at the time?

THE WITNESS: No, I was at that time organizer for the Steel Workers Organizing Committee.

THE COURT: Where were they?

THE WITNESS: Up in Allentown, Pa., and vicinity.

Q. Now, do you know what circumstances brought about your coming to this part of the country?

A. Yes.

Q. Will you state briefly what they were.

A. I was called in to Washington, D. C., by John L. Lewis and we were assigned to different localities at that time and I was assigned to New Jersey with William J. Carney to organize the unorganized workers in this territory.

Q. The whole state of New Jersey?

A. The whole state of New Jersey.

Q. And did you have any specific relations with the American Home Products Company?

A. I did. Workers in the latter part of September and the early part of October——

THE COURT: Where are they and what do they do?

THE WITNESS: At the American Home Products; it is a cosmetic plant.

THE COURT: And where is it?

THE WITNESS: In Jersey City.

THE COURT: How many men does it—you will excuse my doing it because I think it clarifies it, at least it is something I want to know and maybe it will be useful to me. How many people work there approximately?

THE WITNESS: Approximately around about 1200 or 1400 thereabouts, that is office force and production workers.

THE COURT: Did you give the address in Jersey City?

THE WITNESSS: I believe it is 257 Cornelison Avenue.

THE COURT: Go ahead, Dean Frazer.

By MR. FRAZER:

Q. Now, what was your relation with them?

A. Some of the workers came to our office in the latter part of September or early part of October and they wanted to organize under the CIO because of the terrible condition that existed in the plant as to low wages and abuses from the foreladies and foremen in the shop; so from then on we started to organize the workers. We gave them application cards for them to go in and sign the workers up, although they wanted to go out on strike, and I had cautioned them not to strike, that since the Wagner Act gave them the right to belong to an organization of their own choosing, and once we had the majority of the workers we could go into collective bargaining with the employer. Immediately after that the employer found out about the activities going on in the plant and gave an increase in wages, posted a notice up on the bulletin board, increasing the wages from two to four cents an hour increase, and seven days paid holiday, and some other concession, and immediately after that discharged these active workers.

THE COURT: What do you mean by "these active owrkers," Mr. Macri? Who were they?

THE WITNESS: I mean the workers that the employer found out became members of the organization and were soliciting for membership.

THE COURT: What were their names, do you remember?

THE WITNESS: Your Honor, I wouldn't like to give the names of these workers due to the fact that they probably will be ousted again. We had plenty of trouble with the employer to reinstate some of these workers back into the plant.

MR. MATTHEWS: I think, your Honor, under the Wagner Act, they may not be discharged.

THE COURT: Well, I was going to ask him, Mr. Matthews. My next question was going to be, couldn't they take some legal proceeding under the Wagner Act?

THE WITNESS: We have done that.

THE COURT: You have done that?

THE WITNESS: That is right.

THE COURT: I was going to ask him, Mr. Matthews.

Q. You did that in the case of the American Home Products Company, didn't you?

A. That is right.

Q. And you had a proceeding before the National Relations Board?

A. That's right.

Q. Is that right.

A. That is correct.

THE COURT: And the men or women were reinstated?

THE WITNESS: They were reinstated; two of them were reinstated with back pay, and the others were reinstated without any back pay.

Q. Do you know whether the American Home Products Company is engaged in interstate commerce?

A. It is engaged in interstate commerce.

Q. Now what did you do about headquarters? Did you establish any headquarters?

A. Yes.

THE COURT: Before we come to that, did the American Home Products employees form a branch of your union?

THE WITNESS: Well, we were in the midst of organizing the workers. We were getting them as members of our organization.

THE COURT: Yes, but did they form a branch?

THE WITNESS: Well, we just didn't have the opportunity to set up a local and grant a charter to them.

THE COURT: Why was that?

THE WITNESS: Because of the fact that immediately after that the employer began to discharge the workers, and due to the interference on the part of the detective that was watching our office continually, and no doubt reporting back to the employer——

MR. MATTHEWS: I ask that that be stricken out, no doubt reporting back.

THE COURT: Yes. Go ahead.

THE WITNESS: And the interference on the part of the detective who was watching our office.

THE COURT: Well, what was his name?

THE WITNESS: A man by the name of Fitzgerald and then there was three other detectives.

THE COURT: What were their names?

THE WITNESS: I don't know their names.

Q. Now, you referred to your Jersey City office?

A. That's right.

Q. And whereabouts was that located, Mr. Macri?

A. At 216 Academy Street.

Q. Now, will you state what this interference by the detective consisted of.

A. Just as soon as I opened up the office on October 7th a gentleman come in there in the afternoon and posed as a newspaper reporter. I asked him what his name was and he said his name was Joseph Hartness. So he asked me if any meeting was going to be held that night.

MR. MATTHEWS: I object to this conversation, your Honor, please; it is hearsay.

MR. FRAZER: He will identify this man who gave his name as Hartness, if that was his name.

MR. MATTHEWS: I still object to it as hearsay.

THE COURT: It is not offered for the truth. I will allow it.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

Q. Go ahead, Mr. Macri.

A. So he showed me his press card, said it was his press card, but I didn't get a chance to see it, and he stuck it in his pocket, and after I told him that there wasn't any meeting that I knew of, he walked out, and immediately after he walked out I went to the telephone booth and I called up the Hudson *Dispatch* and I asked them if they had a reporter——

MR. MATTHEWS: I object, your Honor please, to any conversation with the Hudson *Dispatch*.

MR. FRAZER: It is identification of this man.

THE COURT: He said he was from the Hudson *Dispatch*.

THE WITNESS: That's right.

A. (Continuing.) So I talked to the girl in the office and asked if they had anyone by the name——

MR. MATTHEWS: I object to the conversation with the Hudson *Dispatch* over the telephone.

THE COURT: I suppose technically we would have to show that they had nobody by the name of Harness, if that is the fact.

MR. MATTHEWS: There is a way of doing it.

THE COURT: I say technically——

MR. FRAZER: I take it he is now showing what information he obtained from the reference to which he was pointed.

THE COURT: However, whatever the Hudson *Dispatch* person says could not be evidence.

Q. Well, did you find out whether he was employed there or whether he had some other employment?

A. He was not employed there; the editor told me.

MR. MATTHEWS: I object and ask that that be stricken out.

Q. What employment did you learn that he did have?

A. Well, he was a detective, a fellow by the name of Fitzgerald.

Q. Detective for whom?

A. For the City of Jersey City.

Q. A member of the police force there?

A. That's right.

Q. Were you in charge of the Jersey City office?

A. I was.

Q. Now, will you state what this man who represented himself to be Mr. Hartness and who you found out was actually Mr. Fitzgerald, what he did in relation to your office?

A. Ever since we opened up our office this Fitzgerald would be stationed right across the street in a corner and watch all activities that was going on in our office. Every time that there is workers would come up to our office they would be interfered and molested. They had as high as four members of the detective force there watching our office at all times. At one time one of our workers come into my office and said——

MR. MATTHEWS: When was that? May we have the date, please?

THE WITNESS: It was either on October the 22d or in November.

Q. Mr. Macri, did you make—have you a memorandum with the dates that you made yourself?

A. I have.

MR. FRAZER: I will ask that the witness be allowed to refer to that to refresh his recollection.

MR. MATTHEWS: I object to it unless his memory is exhausted. The preparation of a witness in this manner is too well known to me after a quarter of a century and the rule is if he cannot remember then if he made a memorandum at the time he may use it.

MR. FRAZER: No, that is not the rule, sir. The rule is if he made a memorandum which he knew at the time was a correct memorandum of the facts and that the reference to that memorandum, irrespective of the time at which it was made, does refresh his memory, then he may refer to that memorandum.

MR. MATTHEWS: Which is the same thing that I said, to refresh his memory.

Q. Now, Mr. Matthews has asked specifically for this date. By referring to your memorandum would you be able to give it?

MR. MATTHEWS: He has given it, October 22d or November.

MR. FRAZER: No, he said "or November."

MR. MATTHEWS: I am satisfied, content, with respect to the date.

Q. Will you refer to the memorandum and state the date, if your memory is refreshed by the memorandum.

MR. MATTHEWS: I would like to examine him on the memorandum if he is going to use it.

CROSS-EXAMINATION (as to Memorandum).

By MR. MATTHEWS:

Q. Let me see the memorandum.

MR. FRAZER: He has no right to see the memorandum.

A. I want to see what my counsel says.
Q Oh, you do.

MR. FRAZER: I object to his seeing the memorandum.

THE COURT: Let me see it. It is just a series of dates, Mr. Matthews.

MR. MATTHEWS: Yes, your Honor.

THE COURT: Wait a moment—with events after them.

MR. MATTHEWS: Yes, but I would like to examine on it, your Honor, as we are entitled to, I think your Honor will allow under the rule, as to when it was made.

MR. FRAZER: Yes, you may do that. You have no right to examine the memorandum itself.

MR. MATTHEWS: I don't know why.

THE COURT: It would seem to me, Dean Frazer, there wasn't any objection to letting him look at it. Have you seen it?

MR. FRAZER: I have no particular objection, no, sir.

By MR. MATTHEWS:

Q. Who typed that memorandum?

A. It was typed at the office.

Q. When?

A. They typed it yesterday, re-typed it.

Q. Where is the data that you re-typed it from?

A. The data?

Q. Yes, the data.

THE COURT: Data.

Q. Data. The Court corrects me.

A. From affidavits that we have.

Q. In other words, you took the affidavits in the case and made this memorandum from the affidavits in the case, is that correct?

A. Yes.

MR. MATTHEWS: Then I object to the use of the memorandum as not being a memorandum made at the time by the witness but merely a repetition of what is in the complaint.

DIRECT EXAMINATION (Continued).

By MR. FRAZER:

Q. Whose affidavit did you refer to, Mr. Macri?

A. My affidavit.

Q. Yes. And this is a summary of what you had already contempo[illegible]ously stated?

A. That's right.

MR. FRAZER: For convenience of reference.

MR. MATTHEWS: If your Honor pleases, this memorandum is not such memorandum as may be used in the case because it is not made contemporaneously with the events recorded thereon. It is stated by the witness that it is a memorandum made up by you——

By MR. MATTHEWS:

Q. You typed it? Did you type it?
A. I did not type it.
Q. Who typed it?
A. I told you the girl typed it.
Q. The girl where?
A. From our office.
Q. Well, where did she get the data from?
A. From the affidavits that I made.
Q. From the affidavits in the bill, is that right?
A. Yes.

MR. FRAZER: No.

MR. ERNST: No.

MR. FRAZER: No, he never said that.

Q. From what affidavit? From what affidavit? Your counsel corrects me, in concert. From what affidavits?
A. From the affidavits.
Q. What affidavits?
A. Of events.
Q. Of what events? What affidavits?
A. Events that took place in Jersey City.
Q. Where did you take those affidavits and when?
A. (No answer.)
Q. Where did you take those affidavits, and when?
A. Well, I gave the affidavits to our attorney.
Q. When?
A. I don't recall.

Q. Well,——

THE COURT: You mean when did you give them, or do you want to know the dates on the affidavits?

MR. MATTHEWS: Well, I don't know what they are at all, these affidavits.

THE COURT: Well, I do want to know, Mr. Witness, I don't want to lead you or anything, but isn't it a fact that when things happened you wrote them down in affidavit form?

THE WITNESS: That is right.

Q. Well when did you write your first affidavit and where did you take the affidavit?

A. I wrote every affair that took place in Jersey City, and I wrote them in our office.

Q. Well; where is the original of what you wrote?

THE COURT: Mr. Frazer, Dean Frazer has it.

MR. MATTHEWS: Oh, pardon me, if your Honor please.

THE COURT: I think that is what he said.

MR. MATTHEWS: May I examine—now, no, that's typewritten; that's not written.

MR. FRAZER: Oh, my Heavens!

THE WITNESS: Dean Frazer has got all the affidavits that took place——

Q. I know he has. When did you make your first affidavit? When?

THE COURT: You mean what day of the month and year?

MR. MATTHEWS: Yes.

Q. Well, haven't you made them all since this case started?

A. I have made them before the case started.

Q. All right. Then when did you make the first one, if you made them before the cast started?

A. Well it is hard for me to say just exactly the date and month.

Q. Well, were they in 1938 or 1937, or was it, the first one, in 1938 or 1937?

A. In reference to the affairs that took place, it was from 1937 and 1938.

Q. Now what was your system? At that time there was no case pending in Court. Now when did you make your first affidavit, whom did you take the affidavit before?

A. They were all filed in our office.

Q. Whom did you make the affidavit before?

A. I said that they were filed in our office, every incident what happened over there in Jersey City. I have typed them out in our report and made them in affidavit form.

Q. All right. Before whom did you swear to your first affidavit?

A. I didn't swear to the affidavit. I am telling you that I made the happenings, what happened—I wrote them down.

Q. Where is what you wrote down?

A. There they are (indicating papers in hands of Mr. Frazer).

MR. MATTHEWS: Let me examine those.

MR. FRAZER: Oh no, I won't.

MR. MATTHEWS: Oh. Now the risibilities of the sympathizers for the CIO should not make any difference in this instance in your not showing me those. If I cannot examine the data——

MR. FRAZER: You may examine the witness, when I have asked the questions which are contained in these papers that I have in my hand.

MR. MATTHEWS: Pardoning your departure from your usual gentlemanliness, if I can't examine the data

upon which a memorandum is made, then I object to the memoranda being used and my objection is well put.

MR. FRAZER: May I ask the Court for a ruling as to whether this memorandum can be used to refresh his memory as to dates?

THE COURT: Well, of course, that memorandum technically speaking can't be used, Dean Frazer.

MR. FRAZER: Very well. I will ask an exception and we will do without the memorandum. It merely takes a little longer.

(Which exception is duly allowed and sealed accordingly.)

(Seal)

By MR. FRAZER:

Q. Well now, we were discussing, and Mr. Matthews said that he was satisfied with the 22d of October or November as a sufficient identification of the date, the operations of the Detective Fitzgerald and other members of the police department of Jersey City in annoyance of the workers at your headquarters.

A. That is right.

Q. Will you go on?

A. At one time——

MR. MATTHEWS: When?

THE WITNESS: October 22d.

MR. FRAZER: Now——

MR. MATTHEWS: October 22d?

THE WITNESSS Yes.

Q. Go ahead, Mr. Macri, despite the interruptions of counsel.

A. One of the workers come into the office while I was busy and he said that——

MR. MATTHEWS: No, I object to the conversation of a worker in his office on October 22d. The worker is the best evidence.

THE COURT: What happened as a result of that, Mr. Macri?

THE WITNESS: That he was molested——

MR. MATTHEWS: I object to that, if your Honor please. That is a conversation. That worker is the best evidence.

THE COURT: What happened as a result of what he said? You must tell only things within your own knowledge, Mr. Macri.

THE WITNESS: That he was molested.

THE COURT: That wasn't withine your own knowledge You must tell what you did or what you saw.

THE WITNESS: Well, immediately after that I went outside and stood on the street corner and smoking my pipe, and there was four detectives in a machine, and this Fitzgerald was there, and when I come out on the street corner, one of the detectives rushed right across the street and stood there for a few minutes. Then he come right over to me and he said, "I don't want you to molest any of the workers."

MR. MATTHEWS: I object, if your Honor pleases.

MR. FRAZER: This is an officer.

MR. MATTHEWS: I object to what the detective said to him. The detective is the best evidence and is available.

MR. FRAZER: This is an officer, one of the agents of the defendant.

MR. MATTHEWS: I object as hearsay.

THE COURT: Now, Dean Frazer, we will have to confine ourselves to the rules of evidence.

MR. FRAZER: We are not offering this for the question of whether what he said was true or not. We are offering it as a proof of an event by one of the police department of Jersey City, what they did.

THE COURT: Do you know the man's name who said this to you?

THE WITNESS: I don't know him.

THE COURT: How do you know he is a detective?

THE WITNESS: He was a detective because he showed me his badge.

MR. MATTHEWS: Well, if your Honor please, anybody could show him a badge; anybody could show him a badge.

THE WITNESS: He said he was a police officer and showed me his badge.

MR. MATTHEWS: I object and ask that that be stricken out. Now, if your Honor please, I am perfectly willing to be confronted with evidence that is legal evidence, but to have the organizer come in here and tell us this story about people that they met whom we don't know, whether they met or not, that is not legal evidence.

THE COURT: Go ahead.

THE WITNESS: So he asked what I was doing——

MR. MATTHEWS: I object, if your Honor please.

THE COURT: Just what happened. Can't you tell what happened without saying what he said?

MR. FRAZER: He can't say very well what happened, may it please the Court, if what happened was a conversation and your Honor will not allow him to testify to the conversation. What happened was a conversation.

THE COURT: We certainly cannot, Dean Frazer, introduce the testimony of somebody who he does not know at all, who simply showed him a badge. There is no use having errors in the record for anybody's sake.

MR. FRAZER: As an identification as a police officer. He was in the company——

THE COURT: I don't care——

MR. FRAZER: He was in the company of Officer Fitzgerald.

THE COURT: That doesn't make him a police officer. Did you make any effort to identify these other people?

THE WITNESS: I did not.

By MR. FRAZER:

Q. What happened with these people? What did they do?

A. Told me not to molest——

MR. MATTHEWS: I object to what they told him.

Q. What did you do? Did you say anything to him?
A. I told him that——

MR. MATTHEWS: I object to his conversation with them.

MR. FRAZER: Oh, not at all. That is a fact. That's not hearsay.

MR. MATTHEWS: Pray why isn't it hearsay? If it is hearsay what they said to him, it is hearsay what he said to them. They are identified.

THE COURT: You can't have conversations with unidentified people. Now if it has anything to do with Fitzerald, you can say it.

MR. FRAZER: What he stated I understand from Mr. Matthews, I understand that I can bring this man, if

I can identify him, to testify to what he said. He is objecting because it is hearsay, and the person who made the remarks is the one to make the statement. Now, on the other side of the conversation I have the man who made the remarks; I want his remarks to be in evidence.

THE WITNESS: Go ahead with the story?

THE COURT: Tell us what you said to somebody you identify, Mr. Macri, not to an unknown person.

A. (Continuing.) Well, that, if I cannct complete my story, your Honor, is just exactly what happened and I am telling the absolute truth, just exactly what happened there in that situation with these detectives where the workers were interferred.

THE COURT: Well, they were detectives? Mr. Marci, you apparently didn't take the trouble to identify.

Q. Do you remember what plate number he showed you, was there any car there at the time?

A. Yes, his car was H-three—I don't exactly know just exactly the rest of the numbers because I had them jotted down.

Q. If I show you the statement which you submitted to me some time ago would your memory be refreshed as to that car number?

A. Yes.

MR. MATTHEWS: Now, your Honor please, I don't think he should be allowed to be refreshed by a statement unless I see the statement or the memorandum that he made at the time.

MR. FRAZER: I will show you the car number, if that is what you want to see.

MR. MATTHEWS: Thank you. The statement—you don't need to hide it. If you don't want me to look at it I won't do it, I am gentleman enough for that; but

the proposition is this: if he made a memorandum at the time——

THE COURT: Mr. Matthews, I think you somewhat misconceive the rule about refreshing a witness' recollection.

MR. MATTHEWS: I believe not. I use it every day.

THE COURT: I have had occasion to look it up recently. My own recollection of it unrefreshed is that it is very broad, surprisingly broad.

MR. MATTHEWS: No, if your Honor please, may I with respect——

THE COURT: Would you like us to look it up?

MR. MATTHEWS: I would be very glad to have your Honor refresh your recollection on it because a memorandum must be made at the time and unless it is made at the time it is utterly valueless.

THE COURT: Do you want me to fatigue my unrefreshed recollection by looking it up?

MR. MATTHEWS: If you will accept my recollection I will give it to you; otherwise we will look it up because it is important, your Honor, please.

MR. FRAZER: May I state my recollection? I disagree with Mr. Matthews on the rule.

MR. MATTHEWS: As my former dean, of course he has the prerogative of disagreeing with me. All right, dean.

THE COURT: Pass onto some other subject, please.

Q. Now, these operations which are now the subject——

THE COURT: May I ask, Mr. Macri, did you check this number, did you take the trouble to check this number?

THE WITNESS: I took the number from the car that he had always driven around.

THE COURT: And then did you check it and find out where it came from?

THE WITNESS: I did not check it.

MR. FRAZER: I think it would be interesting to let the defense have the number of the car.

MR. MATTHEWS: Now, I object to anything—and while I could not call my brother Frazer a Greek, your Honor please, I don't want him to bear me a gift.

Q. Now, did anything happen to you on October 26th?

A. Yes, I had my car parked as usual on Summit Street and when I came there in the morning around ten o'clock I parked my car and there was other cars there, and around about 2:05 in the afternoon I went to get my car and they had my car tagged; no other car was tagged but mine was.

Q. Were you in company with anybody on that day?

A. Thomas Cometa, one of the CIO representatives.

THE COURT: You see we don't know all these people.

MR. FRAZER: He was a witness here earlier.

THE COURT: Oh, he is the one who was a witness?

MR. FRAZER: Yes.

Q. Now, will you turn your attention to the date of October 28th——

A. On October 28th I had a conference arranged with the officials of the Standard Cap and Seal to negotiate an agreement.

THE COURT: Now again, let us go into who they are. I think we had them once, didn't we?

MR. FRAZER: Mr. Cometa testified to them, I believe.

THE COURT: That is the same company?

THE WITNESS: That is the same company.

A. (Continuing.) And Mr. Cometa and I left the office between 12:15 and 12:20 to be there for the conference at one o'clock, and after we left the office Mr. Fitzgerald, who was stationed at the corner, saw us and immediately when we got down to about a block or a block and a half from our destination on Bay Street, we was right on Grove Street, when a car pulled up alongside and said, "Pull over to the side." So we pulled out to the side, and out comes, out of the car, two detectives and a sergeant of the police and one of them, the police sergeant, one of the detectives came on the right and another detective came on the left-hand side of the car. The police sergeant came to the door, opened up the car and says——

MR. MATTHEWS: I object to what the police sergeant said as hearsay.

MR. FRAZER: Well, now, I think——

THE COURT: It is already in evidence from the other witness. You may answer.

MR. MATTHEWS: Your Honor will allow me an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

THE COURT: Without objection, according to my recollection.

MR. MATTHEWS: I didn't hear your Honor.

THE COURT: I said without exception at that time is my recollection. However——

Q. All right, Mr. Macri.

A. "Where do you come from?" Mr. Cometa said. "Newark." "What are you doing here with Pennsylvania

license plates?" Mr. Cometa said, "We are going here on a conference, we are here on business." So immediately the other detective come over on the left-hand side and says, "Open the door." He said, "Let me see your driver's license, let me see your credential," and I showed them both. So the police sergeant begin to frisk Thomas Cometa and then he finally looked in the compartment and he saw the application cards and he begin to read them, begin to take——

Q. What kind of application cards were those, Mr. Macri?

A. CIO application cards for membership.

Q. What was the compartment you refer to?

A. The compartment of my car.

Q. Whereabouts in the car?

A. On the right-hand side right up on the dashboard. Then the police sergeant said to me, "Come on, get out."

MR. MATTHEWS: I object to all this conversation. May I have a general exception?

THE COURT: Yes.

MR. MATTHEWS: Thank you. Go ahead, sir.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. (Continuing.) I got out of the machine and he begin to search me, take out my papers, read them, as if I was some kind of a gangster.

MR. MATTHEWS: I object and ask that that be stricken out, if your Honor please.

THE COURT: It will be stricken out, the last part.

Q. Did he do it gently?

A. Well, I wouldn't say he did it gently.

Q. All right.

A. Then after he searched us he asked me where we were going and I told him that we were here on business

and he says, "Where to?" I said, "We have an appointment at one o'clock with the officials of the Standard Cap and Seal." So he then said, after he saw the application card and read them again, he said, "Now be sure that you don't do any soliciting in this town or God help you, I will take care of you." So he said, "All right, go on." So he finally left us go and he followed us up till our destination; when we got to 150 Bay Street we went up for our business and then finally we didn't see them when we come out about maybe an hour or two hours later and that was that incident.

Q. Did the other detectives do anything in relation to the car while the sergeant was——

A. The one detective that was on the left-hand side, he got inside of the car and he ransacked everything, upset the seats, took out, whatever he was looking for I don't know, and I asked him for the driver's license and also the credential and when I asked him that he says, "All right, don't worry, you will get them in time." Finally after that he did give them to me.

Q. Now, Mr. Macri, did you make any efforts to obtain halls for meetings?

A. I did.

Q. Will you tell us about those efforts?

A. I went around to the various halls such as the Peoples Center, where we tried to get that place for a mass meeting for December the 3rd. Everything was arranged that we were going to have the place through one of the other organizations that had made the arrangement, and finally when it came to the time for the meeting date we found out that we couldn't have the place. We had got an inkling of what was happening so in order to make an investigation I went and saw Mr. Mike Zlepko, who happens to be the manager, about the place and he said that we couldn't have the place.

MR. MATTHEWS: Now, I object to that conversation.

THE COURT: I have already ruled, Dean Frazer, as you know, that the hall owner must be called.

Q. Now, did you get the hall?

A. We did not get the hall.

Q. And had you made any preparations for the function that you were going to hold there in reliance upon the original arrangement?

A. That's right.

Q. What had you done?

A. I went then to the White Eagle Hall.

Q. What had you done about this hall that you had?

A. At the Peoples Center?

Q. Yes. Had you made any preparations?

A. We had a meeting with the trustees and they wanted $3000, and I told them that it was impossible for the CIO——

MR. MATTHEWS: I object to this conversation, if your Honor please.

Q. All right. Now, you didn't get that hall?

A. I didn't get the hall.

Q. Do you know who the trustees were, do you know their names?

A. I know them by seeing them; I don't know their names.

Q. Now, did you make any other effort after that?

A. Yes, we had a conference the next morning, on Saturday, with the rest of the committee from the Peoples Center in order to come to some arrangement in order to get the hall, and they were afraid of giving us the hall——

MR. MATTHEWS: I object, if your Honor please, and ask that that be stricken out.

THE COURT: Yes.

Q. Well, did they get the hall, did they give you the hall?

A. They did not.

Q. Now, did you make any other efforts to get a hall?

A. Yes; on November 27th I went to the White Eagle Hall and saw a lady who was owner or in charge of the

place by the name of L. Gorzynski, and after discussion and asking for the rental of the place I paid a $5 deposit and immediately after I left there; we had the place for December the 7th—they didn't have it for December the 3d, so we had to take the place for December the 7th, that's the only date that they had open.

They gave me a receipt for $5, for the meeting. Later on she sent me a letter that we couldn't have the hall, and they sent it by special delivery letter. Finally they sent a second letter with the $5 deposit, saying that we couldn't have the hall.

Q. Did these people know for whom you were applying for the hall?

A. Yes, the Committee for Industrial Organization.

Q. Now, what about Columbia Hall? Did you try anything there?

A. On November 27th, in order to have a meeting for December the 3d, we went to the Columbia Hall on Ocean Avenue, and I asked for—since there was three people there, I asked who was the manager, and they pointed out to me that the fellow by the name of Jack Fligger was the manager. I asked him if his hall was open——

MR. MATTHEWS: I object to the conversation.

MR. FRAZER: This is a statement of what he did to obtain a hall.

THE COURT: You may answer.

MR. MATTHEWS: I object to the conversation as hearsay.

THE COURT: What is the question?

THE REPORTER: It is in the middle of an answer: "Since there was three people there, I asked who was the manager and they pointed out to me that the fellow by the name of Jack Fligger was the manager——"

THE COURT: That certainly is not hearsay. Go ahead.

THE REPORTER: —"I asked him if his hall was open——"

MR. MATTHEWS: That is the part I object to. I object to the conversation.

THE COURT: Did you get the hall?

THE WITNESS: No, but there is something that leads right up to it, your Honor.

Q. What did Fligger do?

A. After we had made the arrangement that I pay the —he rented the place to us and he said, "It is $20 rental."

I immediately got in a telephone booth and called up our office to tell them that we got a hall for December the 3d, and immediately this Jack Fligger left the office and two of my men who were with me, there were four of us, they went over and followed this Jack Fligger over to the police station across the street, and we waited for Jack Fligger, the manager, to came back. Finally, after an hour or more, and I had my car parked right across from the police station, and I was in a restaurant waiting for this Jack Fligger to come back again, because we had waited so long in the hall—finally I told two of my men to move the car.

MR. MATTHEWS: No, I object to what he told. Pardon me. I ask that it be stricken out.

THE COURT: You moved the car, is that right?

THE WITNESS: Yes, we moved the car; and immediately, about ten or fifteen minutes later, this Jack Fligger come out, the manager, from the police station. So after he come back, I went into the hall and I asked him about the——

MR. MATTHEWS: I object to the conversation with Jack Fligger.

THE COURT: Sustained.

Q. Did you get the hall?

A. I did not get the hall.

Q. Now, I understand the hall had been rented to you for $20, is that right?

A. That is right.

Q. Before the visit to the police station, is that right?

A. That is right.

Q. Now, these efforts were made before November 29th, am I right, that you have just testified to?

A. That is right.

Q. Did you make other efforts to get halls later?

A. I did.

Q. Well now, interrupting, just to keep it in chronological order, will you tell me what happened to you, what you did, on the day of November 29th, 1937?

A. On November 29th, I left my room at about five o'clock, or thereabouts, to go over to Jersey City to distribute literature in the morning. When we got into Jersey City——

Q. Who are "we"?

A. Mr. McGinn, Mr. Foley and Walter Barry. So when we got over to Jersey City, I had literature in my car and I had parked in front of the United Steel Workers Office at 76 Montgomery Street, and there was a lot of policemens and detectives around the place. For blocks around there was many detectives in machines and also on foot, and also police officers. Mr. McGinn and Mr. Barry, after I parked my car in front of the place, took two bundles of the literature upstairs. After they had left, one of the policemen came over and looked at the car and inside of the car, and I thought it was advisable to move my car from that location. So I moved my car the next block and had parked my car there and handed out the rest of the literature to Mr. McGinn and myself, and I started to walk down towards the United Steel Workers' office when I was met by a number of detectives who stopped me and says, "Come on, get back."

MR. MATTHEWS: I object, if your Honor pleases, to this conversation with unidentified people.

THE COURT: How do you know they were detectives?

THE WITNESS: They were police officers.

THE COURT: Were they in uniform?

THE WITNESS: Some were in uniform and others were not.

THE COURT: All right.

MR. MATTHEWS: I object to the conversation as hearsay.

THE COURT: Well, certainly, the law is that a uniform indicates a police officer, Mr. Matthews. You may answer.

MR. MATTHEWS: Some were not.

THE WITNESS: So they said, "Get back——"

MR. MATTHEWS: Pardon me. Your Honor will allow me an exception?

THE COURT: Yes, certainly.

MR. MATTHEWS: All right.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

THE COURT: Go ahead.

A. So they aid, "Get back," and they started to push me towards the car. They said, "Where's your car?"

I said, "Over there."

I said, "Am I under arrest?"

"Never mind. Get back."

So they started to push us towards my machine, and I asked them if I was arrested and they said, "Never mind."

When we got to the machine, why, he said, "Open up your car."

And I said, "Am I under arrest?"

They said, "Never mind. Open that car."

So they told one of the policemen, "You get in the machine with them."

Then he finally said to the other policeman, "You get in, too."

So when we got in the machine, he says, "All right now; drive."

I said, "Am I under arrest?"

"Never mind. Keep on driving."

So I kept on driving. Then I said, "Where are we going? To the police station?"

He said, "Never mind. Keep on going."

And finally—"Keep on driving"—I asked them again. "Are we going to the police station?"

He said, "Yes."

And we kept on driving. I was deported out of the——

MR. MATTHEWS: I object, if your Honor please, to the use of the word "deported."

THE COURT: Yes, just tell us what happened without characterizing it.

MR. FRAZER: It seems rather unimportant. It has been used by counsel many times, of course.

MR. MATTHEWS: Not by this counsel and I now object.

THE COURT: I asked him not to use the word. All right.

THE WITNESS: Go on now?

THE COURT: Yes, go on, but don't use words that characterize, just use words that describe.

Q. Where did you go to?

A. Out of the City of Jersey City. The policeman finally said, "All right leave us off here. Now, you can go

on your way." Then there was another machine in the back that was following us all the way from Jersey City. So immediately after that I went on the Pulaski Skyway, and went back into Jersey City, and I parked my car and got in a taxicab and went down to the office of the United Steel Workers, and I had a meeting with the workers, and there was a lot of photographers and newsreel men and newspaper men. So we had a meeting together. When we left the office to go down and distribute literature, we left the office and walked down towards Exchange Place to distribute our leaflets. We no sooner started to distribute leaflets, than the detective nailed me and said, "Come on."

And I said, "Am I under arrest?"

"Yes, you are under arrest."

So they took me across the street where they had a few people huddled together, and so they were guarding us there, and then one of the detectives said to a chap that was probably a janitor——

MR. MATTHEWS: I object. I object and ask that that be stricken out. What right has this man to characterize a citizen as a gangster, any more than any other citizen there.

MR. FRAZER: He didn't say gangster. He said janitor.

THE COURT: He said janitor.

MR. FRAZER: Janitor.

MR. MATTHEWS: The gallery, apparently, are laughing. I thought he said "gangster."

THE COURT: Do you think there are any gangsters in court?

MR. MATTHEWS: I wouldn't be surprised. I looked them over and while appearances are deceiving, I wouldn't want to find some of them in a dark alley.

MR. FRAZER: I think those remarks are rather improper, your Honor.

MR. MATTHEWS: The Court asked me a question. I want to be truthful to the Court.

THE COURT: Well, we were all a little bit humorous.

MR. MATTHEWS: Pardon?

THE COURT: I think we were all a little bit humorous.

MR. MATTHEWS: Yes, and that's the joy of it, Judge, once in a while. It is hard work otherwise, may it please the Court.

THE COURT: Go ahead.

Q. What happened? You were over there with the janitor.

A. Yes. The janitor was polishing some of the rails, and one of the detectives said——

THE COURT: He wasn't polishing a gun, was he?

THE WITNESS: No, I didn't see that.

A. (Continuing.) So he said, "We want to move these people into the building," and the janitor says, "Nothing doing." "But we are police officers."

"It makes no difference," said the fellow. "You can't bring them in here."

So they held us there for a while, and one of the chiefs or one of the higher officials finally came over and talked to the ones who were guarding us and said, "All right. Where did you come from?"

I said, "I came from Newark."

MR. MATTHEWS: I object. This is hearsay.

MR. FRAZER: Oh, no, this is one of the police officers.

THE COURT: Was this one of the police officers?

THE WITNESS: That is right.

THE COURT: All right.

MR. MATTHEWS: Unidentified. No way of answering testimony like that, none whatsoever; no chance for a defendant in a case like this.

THE COURT: Was he in uniform? Was he in uniform?

THE WITNESS: He was not in uniform. He was in civilian clothes.

THE COURT: All right. You can't say what he said.

MR. MATTHEWS: I ask that it be stricken. Glad to meet anything that they will give us an identification on.

Q. Did this man have a badge?
A. None that I saw.
Q. All right. Now what happened to you then as a result of the remarks that this man made?
A. They said, "Get on to the ferry."

MR. MATTHEWS: No, I object to the conversation and ask that it be stricken.

THE COURT: What happened to you as a result?

THE WITNESS: They told us to leave.

MR. MATTHEWS: Oh, I object to what they told him.

THE COURT: Where were you when——

THE WITNESS: At Exchange Place.

MR. MATTHEWS: How near the ferry?

THE WITNESS: Well, just maybe a quarter of a block.

THE COURT: Were you told by persons that you can't identify to get on the ferry?

THE WITNESS: That's right, that's right.

Q. Were there police officers in uniform there, too?
A. There was policemens in uniform there also.
Q. And were these men in plain clothes acting with the men in uniform?
A. They were.
Q. Now, say what happened.

MR. MATTHEWS: I object to any conversation.

THE COURT: You may answer.

THE WITNESS: I may answer?

THE COURT: Yes.

A. They finally told us to get——

MR. MATTHEWS: I object to the conversation.

THE COURT: I understood—it now appears that there were men in uniform at these places.

MR. MATTHEWS: Judge Clark, please, sir, a man like this that has his buddies hanging around him at every turn, could have taken numbers and identified them, and when they are not identified that's their burden and we can't take testimony and take the officials of a city like Jersey City and subject them to testimony of this kind with no chance of refutation.

THE COURT: Were there any numbers taken at all?

THE WITNESS: They did not.

MR. MATTHEWS: Judge——

MR. FRAZER: How do they take numbers if they are in plain clothes?

MR. MATTHEWS: They can't take numbers if they are in plain clothes, but it is not being allowed because they are in plain clothes, but because there were policemen among them, and they were acting in con-

cert with them. They could have taken the policeman's number. I submit, if your Honor pleases, in fairness to these defendants, that I should not have to have that testimony in.

MR. FRAZER: Sir John seems to have a conception that this was a very pleasant, orderly thing, where you could sit down at a desk and take a lead pencil or get a pen and ink and write down things. The picture, as I have it, is one of considerable physical violence, and very little opportunity to carry on this peaceful trade of writing down numbers.

THE COURT: Did you resist going on the ferry?

THE WITNESS: No, I told them that I didn't belong on the ferry, and they told me to get on the Tubes and get out of Jersey City.

MR. MATTHEWS: I object to this conversation, with all due respect to the Court.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

THE COURT: Where did you ultimately go?

THE WITNESS: I went across the street and saw Mr. McGinn, and I got some of the literature and went to distribute one of the leaflets, when I was nabbed by a detective and he said, "Come along."

MR. MATTHEWS: No, I object, if your Honor please. Here is another instance of it. Must this case be tried in this manner?

THE COURT: What happened to you?

MR. MATTHEWS: This fellow is a professional, you know, your Honor. You can tell it by his talk, his tone

on the stand. He isn't giving you testimony. He is giving you what he has prepared, documentarily.

MR. FRAZER: I object to any such comments on the witness. If Mr. Matthews wishes to test his credibility by a proper examination I will permit that, but I shall certainly object to any such gratuitous statements.

MR. MATTHEWS: I again repeat that this man is a professional, from his very tone and his very language on the stand.

THE COURT: He is a labor organizer, Mr. Matthews.

MR. MATTHEWS: Yes, a professional CIO organizer.

THE COURT: Well, I don't characterize them.

MR. MATTHEWS: Well I do characterize that, with the Court's permission. This fellow is no babe in the woods.

MR. FRAZER: I object to the characterization and I would ask the Court for a ruling on its propriety.

THE COURT: What happened to you, Mr. Macri?

THE WITNESS: I asked him if I was arrested and he said, "Yes, you are under arrest."

So he picked—he arrested Mr. McGinn and two others.

MR. MATTHEWS: Now, if your Honor please, certainly he knows the number or the name of the man who arrested him.

MR. FRAZER: He has a perfect right to ask that on cross-examination.

THE COURT: Were you taken to the police station?

THE WITNESS: Right.

MR. MATTHEWS: Well, I object to the conversation, unless he identifies with whom.

THE COURT: We have gone to the police station now, so we are beyond that.

MR. MATTHEWS: We may go to the police station, if your Honor pleases, but he may go there with one of his own.

THE COURT: He went there under duress, I take it. Didn't you?

MR. MATTHEWS: Yes, when you get one of those babies going under duress, if your Honor please, you have got to get up early in the morning.

MR. FRAZER: I move to strike out that as gratuitously insulting.

MR. MATTHEWS: I consent that that be stricken out, not because it is insulting, but because it is not a part of the case.

SAMUEL MACRI, resumed the stand.

DIRECT EXAMINATION (Resumed).

By MR. FRAZER:

THE COURT: I have Wigmore here, Mr. Matthews.

MR. MATTHEWS: Yes, your Honor.

THE COURT: Do you want me to give it to you or do you want me to read it? We both seem to be right.

MR. MATTHEWS: That is a joy to me to be right with you. What is it, your Honor please?

THE COURT: Wigmore says: "That the paper was not drawn up about the time of the events is not an essential fault. The recollection may be equally refreshed by a recent note as by some contemporaneous record. It might, in fact, be argued that there was less danger of reliance upon the record itself and more probability

of actual refreshment where the paper was one confessedly having no value as a contemporaneous record of past recollection.

"There is adequate authority for the result thus required by principle. Yet the greater number of decisions, and most of the obiter dicta, announce as a requirement that the memorandum used must have been made 'contemporaneously or nearly so' with the events, 'at or near the time,' with the same varying phrases used in the rule for Past Recollection."

And then Professor Wigmore, with his usual clarity, goes on to point out that learned judges have made a slight confusion between the two rules, so that I am left a little in doubt as to what the current law in the Federal Court is.

MR. MATTHEWS: The law in our state court, because I use it every week, is that it must be a memorandum made contemporaneously with the event or sufficiently adjacent thereto to warrant the Court in its wise discretion calling it contemporaneous. Moreover, the second part of the rule, as Ed O'Mara and I went over it outside, is that the memory must first be exhausted.

THE COURT: I don't think Dean Frazer disputes that part of it.

MR. MATTHEWS: The first part of it is that in our state—and I take it you will follow the state rulings——

THE COURT: I would; I don't say that I should.

MR. MATTHEWS: Well, I mean that is what we usually do.

THE COURT: I ought to say also, Dean Frazer, that Professor Wigmore says the memorandum should be shown to the opposing counsel. I only say that in fairness to Mr. Matthews.

MR. MATTHEWS: May I say off the record it is so refreshing for you tell my dean that.

Q. I think you got to the police station, didn't you, Mr. Macri?

A. Right.

Q. Now, what happened then?

A. When we got into the police station there was quite a number of us that was charged with violation of the city ordinance, so they searched us, took all our personal papers, watch, everything that we had, pocketbook, and they had us huddled in the one room. Finally Chief of Police Walsh came into the room and said, "Did you search these people?" And one of the officers in charge said, "Yes, we did search them." "Give them back their belongings." So we finally got our belongings back again, so we were held in the room and we were hungry, we didn't have anything to eat, so when we went upstairs——

Q. What time did you get there?

A. Might have been after eleven o'clock or one o'clock. I don't know just the exact time, what time it was—I know, I believe it was after lunch time, and we were in before Judge Botti. We find that we were charged instead of violation for the city ordinance, violation of the distributing of literature, we were charged with unlawful assemblage. It was a surprise to all of us.

MR. MATTHEWS: I ask that that be stricken out, your Honor, please, that it was a surprise to them.

THE COURT: Yes.

A. (Continuing.) The first cases that were tried were seven of the other workers and our attorney had asked for different motions——

MR. MATTHEWS: I object, your Honor, please, to what the attorney asked for.

THE COURT: Yes.

MR. FRAZER: We have the record in evidence. It is simply an orderly narrative of events.

THE COURT: The other record is in evidence?

MR. FRAZER: Yes, your Honor, the distribution case is in evidence, the record.

THE COURT: Yes. You were going to supply the ultimate fate of the assemblage case, weren't you, from the minutes or from some record?

MR. FRAZER: We have no records of that, sir.

THE COURT: I thought it was asserted that there must be some records.

MR. FRAZER: It was asserted that there were records but I asked if they would produce them; they said no, they wouldn't produce them.

MR. MATTHEWS: I don't believe the Police Court has a record, no stenographer there.

THE COURT: No, but this unlawful assemblage case was afterwards presented to the Grand Jury, isn't that right?

MR. FRAZER: That's right, it was presented to the Grand Jury and they were held in $1,000 bail.

THE COURT: That is what was asserted.

MR. MATTHEWS: But a police court wouldn't have a record unless there was a stenographer sworn by request.

THE COURT: You read the record, Mr. Matthews, you saw what happened, that the Police Judge refused to permit a stenographer to be sworn.

MR. MATTHEWS: That, of course, is his prerogative if he wants to.

THE COURT: I am not passing on that.

MR. FRAZER: There is a statute to the contrary.

MR. MATTHEWS: There is no statute to the contrary.

THE COURT: Anyway there was a stenographer present; he allowed the stenographer to take down the proceeding.

MR. MATTHEWS: There what?

THE COURT: There was a stenographer there and the proceedings were taken down and they are in evidence.

MR. MATTHEWS: Well, unless the stenographer was sworn, of course, it would have no value unless it was the stenographer of the court.

MR. FRAZER: It is already in evidence in this case without objection.

Q. Will you go on.

MR. MATTHEWS: I object to the testimony of what the Judge said as hearsay evidence and as——

Q. You eventually got out of the police station, did you not?

A. Yes.

Q. When did you get out?

A. I was put under $1,000 bail.

MR. MATTHEWS: Now, that isn't an answer to that question, if your Honor please.

THE COURT: When did you get out?

THE WITNESS: When did I get out of the jail?

THE COURT: Yes.

THE WITNESS: I got out of the jail next morning around 12 o'clock.

Q. After posting the bond?

A. That's right.

Q. Now, those were the events of the 29th and 30th then of November?

A. That's right.

Q. Now, after that did you make any other efforts to get halls?

A. I did, on the——

Q. I direct your attention to the 12th of December.

A. On the 12th of December I went to the Polish Community Hall on Bay and Grove Street to rent that place; I had been there before without any success and I went there in particular and they told me that they had an open date——

MR. MATTHEWS: I object to what they told him and ask that it be stricken out.

Q. Did you get a date there?

A. Yes.

Q. What was the date that you got?

A. January the 7th.

Q. Now, did you have your meeting there on the 7th of January?

A. I did not.

Q. Why not?

A. They wouldn't give us a hall.

Q. I direct your attention to the 18th of December. Did you make any effort to obtain a hall at the Jewish Center?

A. I did, I went there and saw the secretary for the rental of the place and they said they would let me know.

MR. MATTHEWS: I object to what he said.

Q. Were you able to get the hall?

A. I did not.

THE COURT: What is the name of the people up there?

THE WITNESS: I don't know the name; I didn't know the name. I only know that they were in charge.

Q. Now, did you make any attempt at the Polish Hall?
A. I did.
Q. When was that, do you remember?
A. That was on December the 20th, and I didn't get the hall there because they said that they——

MR. MATTHEWS: I object to what they said.

Q. Very well, you didn't get the hall?
A. We didn't get the hall.

MR. FRAZER: I would like to have on the record, if I may, your Honor, a general exception to the refusal to permit conversations about the hall to be testified to.

(Which exception is hereby allowed and sealed accordingly. (Sealed)

Q. Now, turning to the date of January the 26th did you have occasion on that day to see the defendant Casey?
A. On January 26th, I went to Commissioner Casey to get a permit to distribute literature and his secretary asked me who I was and I told him my name and what I represented and he asked me what I wanted to see Commissioner Casey for and I told him that I wanted to see him to get a permit for the distribution of literature, and he said "Just a minute" and I had a copy of the leaflet which was the message of President Roosevelt to Congress, and he said, "Well, just a minute." So he went inside of the office and he come back out and he said, "You can't have a permit, no permit will be granted."

MR. MATTHEWS: Might we have which message that was, was it on the State of the Union?

MR. FRAZER: It is in evidence.

A. (Continuing.) And I told him "How is it that someone, others could have permits to distribute literature, and we couldn't?" He said, "I don't know anything about it." I said, "How does it come that the Chamber of Commerce can distribute literature and we couldn't get a per-

mit?" They said, "I don't know anything about it" and I asked them about others, about Bingo, that they could distribute literature. He says, "I don't know anything about it." He says, "No permit is granted" and we didn't get a permit.

Q. Do you know, is it a fact that the Bingo and Chamber of Commerce literature had been distributed?

A. I do.

Q. Now, turning to February the first with relation to the American Home Products Company.

A. On February the first, four or five other representatives went to the American Home Products to distribute literature, the President's message to Congress and that morning we were stopped by the police officer and were not allowed to distribute any literature.

MR. MATTHEWS: I object, if your Honor please, unless he was there. Does he know that of his own knowledge?

Q. Were you there, Mr. Macri?

A. I was not there. I was there in my office.

MR. MATTHEWS: Well, then, I submit, if your Honor, please——

MR. FRAZER: Very well.

MR. MATTHEWS: —that it should be stricken out.

Q. Did you give your men when they went out that day any circulars to distribute?

A. I did.

Q. I show you one and ask you whether that is the circulars which you gave them to distribute that day?

A. That is right.

Q. Who were the men that went out that day, Mr. Macri?

A. Bob Oliver, a gentleman by the name of Zarkarich. Al Barkin, John Holley; and I don't remember if there was another one.

MR. FRAZER: I would like to offer that. Any objection?

MR. MATTHEWS: No, none at all, particularly to the President's message, me being a Democrat, and a Roosevalt Democrat, Spaulding, a hundred per cent.

(Received in evidence and marked Exhibit P-32.)

Q. Now, February fourth.

A. On February fourth I went to the People's Palace to rent the hall there, and I talked to the janitor, if the place was open, if they had any open dates, and he said they had plenty of——

MR. MATTHEWS: I object to what they said, if your Honor please.

THE COURT: Did you get the hall?

THE WITNESS: I did not get the hall.

THE COURT: Do you remember the name of that man?

THE WITNESS: Yes. The manager who I had to see was a man by the name of Mr. Saxton.

THE COURT: Saxton.

THE WITNESS: Saxton.

Q. Were there any open dates at the time you applied?

A. Mr. Saxton told me that when I mentioned——

MR. MATTHEWS: I object to the conversation as hearsay.

THE COURT: We will have Mr. Saxton.

A. Mr. Saxton wouldn't give me the hall.

Q. What about the Grand View Auditorium?

A. The Grand View Auditorium, the bartender, when I asked him if he had an opening date——

MR. MATTHEWS: I object to the converation with the bartender.

MR. FRAZER: That is what he went there for. I don't know how he can say that he went there to get halls, if he can't say he went to get halls.

THE COURT: Did you see the manager?

THE WITNESS: Yes, I saw the manager.

THE COURT: He said he saw the manager. What was the manager's name.

A. The manager was Mr. Banarducci.

THE COURT: Did you ask him for the hall?

THE WITNESS: The thing is that they had an opening date for February 28th, and when I told them that it was the CIO the bartender said, "Well, you had better see the manager," because of the fact that when I said the Committee for Industrial——

MR. MATTHEWS: I object to what the bartender said.

Q. Well, you found that they had an open date for February 28th?

A. That is right.

Q. Were you able to get it after you talked to the manager?

A. No, because he knew me, becuase I was there before.

Q. Now do you remember the events of February 10th in connection with the Consolidated Razor Company?

A. I had got a letter, an anonymous letter, saying——

MR. MATTHEWS: I object to what an anonymous letter said.

THE COURT: Well, as a result of the letter. First, what is this Consolidated Razor Company?

THE WITNESS: The Consolidated Razor Company is the plant that makes safety razor blades.

THE COURT: Yes, I gathered that, but where is it?

THE WITNESS: In Jersey City.

THE COURT: Do you know the address?

THE WITNESS: It is on Cornelison Avenue.

THE COURT: And how many people do they employ, or did they employ at this time?

THE WITNESS: They employed in the neighborhood of about 90 employees.

THE COURT: And as a result of the letter you did what?

THE WITNESS: I went down there to talk to some of the workers that night and made arrangements for them to come up to a meeting on Wednesday night, and that night the workers didn't show up, so on February 10th I went down to the plant around dinner time or lunch time to talk to some of the workers again and see why they didn't show up, and I looked in front of the plant, and there was a police officer, and while I was waiting for some of the workers to come out of the plant, I saw one young fellow that I had previously spoken to a few nights before that, and I asked him——

MR. MATTHEWS: No, I object, if your Honor please.

THE COURT: All right.

MR. MATTHEWS: —to a conversation with an unidentified person.

THE COURT: Do you know his name?

THE WITNESS: I don't know his name.

THE COURT: You know he worked there?

THE WITNESS: I know he worked there.

THE COURT: Go ahead.

A. I asked him——

MR. MATTHEWS: Your Honor, I object. Just a minute, please.

THE COURT: Wait a minute. We will se what his answer is. If it is objectionable I will strike it out.

MR. MATTHEWS: A conversation is objectionable, isn't it, your Honor?

THE COURT: Well, I can't tell at this point. Go ahead and answer.

MR. MATTHEWS: Well, any conversation with an unidentified person is so difficult for people to meet. Won't your Honor believe me?

THE COURT: If it is objectionable, I will strike it out.

MR. MATTHEWS: I ask an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

THE COURT: Go ahead.

THE WITNESS: I asked the worker what time the workers left from the plant, and he said that "they are now eating"——

MR. MATTHEWS: I object to this conversation.

THE COURT: Well, I suppose it is irrelevant on the ground it is trivial. Tell us what happened then.

THE WITNESS: Immediately after that, two of the workers came out, out of the plant, and I started to talk to them, and as I was talking to them I saw the policeman come up towards us and as they come up, the two workers said, "These"——

MR. MATTHEWS: I object, if your Honor please, to what the workers said.

MR. FRAZER: What the workers said to the policeman.

MR. MATTHEWS: The policeman is not identified.

MR. FRAZER: It is perfectly proper.

THE COURT: Was he in uniform?

THE WITNESS: He was in uniform.

THE COURT: All right, go ahead.

THE WITNESS: The police officer came up to us——

MR. MATTHEWS: May I have an exception on the record?——

THE COURT: Yes, you may.

MR. MATTHEWS: —to this conversation between two unidentified people and an unidentified policeman?

THE COURT: You may.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

THE COURT: Go ahead.

THE WITNESS: Continue?

THE COURT: Yes, go on.

THE WITNESS: When the police officer came up, why, these two fellows said to the police officer, "These two men were molesting us."

I happened to be with a fellow by the name of Nicholas Kowitski, who was along with me, and immediately the police officer——

MR. MATTHEWS: May I have that name?

THE WITNESS: Kowitski, Nicholas Kowitski.

MR. MATTHEWS: C-o-w——

THE WITNESS: K-o-w——

MR. MATTHEWS: I-t-s-k-y?

THE WITNESS: I-t-s-k-i, I think.

MR. MATTHEWS: Thank you.

THE WITNESS: So the officer said, "What are you doing here?"

And I said, "Talking to the workers."

He said to the workers, "Have you got a machine?"

The workers said, "No, we don't."

I said, "I have a machine, parking right down here, just a half a block down."

He says, "All right, come on."

So they took us in the car. These two fellows got in, and I got in, the officer got in, and then this fellow—previously, the fellow that I had spoken to, they said, these two fellows said, "That's another one, he was molesting."

He said, "Get in."

So we went up to the police station, and when we got to the police station, why, Captain Gordon came out, and the police officer was telling him what happened, and finally Captain Gordon said to me, "What's your name?" and I told him, showed him my credential, and he said to the officer, "We can't hold them for that. Let them go."

So immediately, as we went outside, I asked these workers what their names was, and they wouldn't tell me. They said, "Now, it is best for your health if you don't come down there in front of the plant."

MR. MATTHEWS: I object to this conversation with the workers with no policemen there.

THE WITNESS: The policeman was there.

MR. MATTHEWS: Well, if the policeman was there, he is still the unidentified policeman. I object again.

Your Honor can well see the system that this CIO group has in a court case here. This is to create a record in a barren case. There never was a less fertile or more barren cause than this, and this is the way these fellows have of building it up; coming along here and going on the stand, these professional agitators from all over the country, and making statements like this, that unidentified people said to an unidentified officer, "You do so and thus and so." Why, it is impossible for any American citizen in the sense of fair play to all to meet a case like this. It is barren, absolutely barren, if your Honor please, of legal justification. I don't think that conversation is even remotely admissible.

MR. FRAZER: That would be excellent matter for Sir John to put in his brief when he comes to write his brief, but this is hardly the proper time for it.

MR. MATTHEWS: That is not a subject for brief. The Dean is again off tack, and when the Dean has a bad case he goes off awfully bad. But the point is this, if your Honor pleases, that you could not brief that, please, Judge Clark, because there is no answer possible to unidentified people talking to an unidentified person.

THE COURT: Just tell us what happened.

THE WITNESS: Immediately, Mr. Kowitski and I went down to the plant to talk with the workers. No sooner I got there and parked my car, along comes Captain Gordon in his machine, and he pulls over to my car, and says, "You can't park here."

So I said, "Just a minute, until I get out of the car."

And I got out of the car and I said, "What do you mean, I can't park here?"

He says, "You can't park here."

I says, "But I have a right to park here."

"You can't park here, and you can't talk to the workers. There is no strike here, and since there is no strike, you can't talk to the workers."

"But," I said, "these workers are working under miserable conditions, and my job is to organize these workers in order to better their condition."

He says, "You can't stay here. You have got to leave."

And I told him about our Constitutional rights that we have a right under the Constitution to peaceful assembly, free speech and freedom of the press.

He said, "I don't care about the Constitution. Don't preach Constitution to me, because I go by Vice-Chancellor Berry's decision. Vice-Chancellor Berry's decision says that when there isn't any strike in a plant you can't picket and you can't picket here, and you can't talk to these workers."

And I asked him, I says, "Does Vice-Chancellor Berry's decision supersede the Constitution?"

And he got riled up and he said, "Now, don't preach the Constitution."

So finally, after I maintained my constitutional right, I finally walked away and said, "All right," and that ended it.

Q. Now did you have any occasion on that day to go down to the American Home Products?

A. I did; talking to the workers in front of the plant when they come out, and every day that I went down to talk to the workers, why, this Detective Fitzgerald would be following me, either going down or up, and he would stick his head out of the window to hear what I was saying to the workers, and I was telling the workers that——

Mr. Matthews: No, I object to what he was telling the workers.

Mr. Frazer: In Fitzgerald's presence.

MR. MATTHEWS: Sticking his head out of the window, he said.

MR. FRAZER: Yes, so that he could listen.

MR. MATTHEWS: Oh, well——

THE COURT: There is no secret about what he was telling the workers. You were attempting to organize the workers, weren't you?

THE WITNESS: That is right, that is right.

MR. MATTHEWS: Well, if your Honor please, with due respect to the Court——

THE COURT: I mean is there any secret about it? He has said so many times.

MR. MATTHEWS: There is much secret about it, very much secret about it. You can see by this man's testimony that there is much secret about it.

THE COURT: Well, there is no secret on my part.

MR. MATTHEWS: The point is this, if your Honor pleases: one of the galeties of nations is a CIO circular with Roosevelt's message on it. Now, there is no secret to Roosevelt's message, but the organization of this crowd is carried on, if your Honor pleases, along, we will call it. Here is an Allenjonian come into Jersey City, and even when he is told by workers from a plant, "Don't molest us," he still persists in molesting them, and when he is brought to the police station on the complaint of the workers and is let go, he still goes around doing the same thing. Now, I want to put in this record——

THE COURT: This is another plant now.

MR. MATTHEWS: I know, but the same day, going about like a universal pest.

THE COURT: Well, really, Mr. Matthews, you cannot characterize labor organizers as either agitators or pests, no matter what labor organization they belong to.

MR. MATTHEWS: Well, your Honor, in your judicial capacity, of course must sit there coolly and calmly, and as you do, dispassionately judge them, and of course that should be our duty too, but one can't listen to the itinerary of this fellow and conclude that he is burned up with constitutional rights.

MR. FRAZER: If Sir John could control his irascibility we could save a great deal of time.

MR. MATTHEWS: I have objected to the conversation because it is hearsay.

THE COURT: Yes, go on, don't tell us the conversation.

MR. MATTHEWS: Your Honor will allow me an exception because——

THE COURT: I won't allow you an exception to a ruling in your favor.

MR. MATTHEWS: Oh, I didn't hear it, I am sorry. That is twice now this afternoon.

Q. What happened?

A. The thing was that the detective was always following me around and of course scaring the workers——

MR. MATTHEWS: I object and ask that it be stricken out, scaring the workers.

THE COURT: Yes, that is a conclusion. Strike it.

A. (Continuing.) That same night I went down to the Consolidated Razor Company to talk to the workers again. I found out that these two workers who at dinnertime didn't want organization were foremens, bosses of the plant.

MR. MATTHEWS: I object and ask that it be stricken out because that is hearsay.

THE COURT: Well, did you get their names, Mr. Macri?

THE WITNESS: I didn't get their names; they wouldn't give me their names.

THE COURT: How did you find it out?

THE WITNESS: I found out through the lady who happens to be the landlord or supervises the building.

MR. MATTHEWS: I ask that that be stricken out.

THE COURT: Can she identify them?

THE WITNESS: Sure, she can identify them.

MR. MATTHEWS: I ask that it be stricken out.

THE COURT: It will be stricken out.

MR. MATTHEWS: Thank you.

Q. This was all on February 10th, wasn't it? Now, February 14th did you see Chief of Police Walsh?
A. On February 14th——

MR. MATTHEWS: Pardon me, your Honor, please. Do I understand that the bill was filed on January 3d, was it?

MR. FRAZER: Somewhere about that.

MR. MATTHEWS: How is this testimony competent, if your Honor please?

MR. FRAZER: That has been all gone into so many times, Sir John, before you came into the case.

THE COURT: Yes, that has been ruled on but you may have another exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: My objection is place for this reason, that this testimony volunteered now is the testimony of this organizer as to things that he did after the bill was filed.

THE COURT: I permitted an amendment and I permitted an exception to the amendment.

MR. MATTHEWS: Amendment? Is there an amendment to the bill?

THE COURT: Yes.

MR. MATTHEWS: Pardon me a minute. May I confer with Mr. O'Mara because I thought he told me at noon there was none.

Are you sure there is an amendment?

THE COURT: I didn't say in writing, I said I permitted counsel to amend.

MR. MATTHEWS: But until the amendment—I am surprised; I haven't answered the amendment.

MR. FRAZER: They have been surprised for the last two weeks.

MR. MATTHEWS: But I mean I am surprised to death.

MR. FRAZER: But you are so late in the case.

MR. MATTHEWS: I think my lateness has been compensated for, don't you?

THE COURT: I have allowed an exception so that you are adequately protected.

MR. MATTHEWS: I am not adequately protected, Judge Clark. Let's look the thing straight in the face, because the record is as important as the trial. Here is testimony being offered that has to do with matters entirely subsequent to the filing of the bill. It could be done, as Ed O'Mara and I discussed, in an amendment to the complaint. An amendment has not been had, I am not apprised of it, your Honor; I don't know the facts alleged. I have no way of meeting it either on cross-examination of this witness or other-

wise. Now, in fairness to me don't you think, as the rules of pleading dictate, that I should have a copy of that amendment?

THE COURT: I thought it had already been filed.

MR. MATTHEWS: Judge, I had a conference this noon——

THE COURT: No, you must be right about that.

MR. FRAZER: No, it has not been filed.

THE COURT: It should be filed, Dean Frazer.

MR. MATTHEWS: Well, it is the fag-end of the day. Maybe they can give it to me in writing, I will accept it in writing now and we can continue on afterward.

MR. FRAZER: I thought we were following the quite usual equity practice where the Court says "I will permit an amendment to cover this" and the case goes on with the trial without any formal filing of amendment.

THE COURT: But it should be filed, Dean Frazer.

MR. MATTHEWS: More than that. Much as I hate to be quarreling with my dean on this, but the ordinary equity practice must not be followed except equity is done. Now, equity will only be done here if I am apprised what that amendment is, and I can deny it. I am even willing to waive the denial for the time being but I should have in black and white what that amendment is.

THE COURT: Do you want to continue, Dean, with this witness in the morning or are you going to withdraw him for another witness?

MR. FRAZER: No, I expected to finish him up, I didn't expect there would be so many interruptions of counsel. The examination is relatively short.

THE COURT: But the rulings of the Court would indicate my interruptions were well put, but I will have a little time with the gentleman myself.

THE COURT: That is what I thought. So that you had better make the necessary arrangements so that there won't be any confusion in the morning.

MR. FRAZER: But let us go right ahead with the case.

MR. MATTHEWS: If you don't ask any questions within the purview of the amendment.

MR. FRAZER: Oh, no, we have just been served with a subpœna by the defendant, they have waived any amendment. They have gone into the whole matter. We have a most remarkable subpœna here which asks us to bring over the whole of the office of the CIO.

MR. MATTHEWS: I would dispense with a certain amount of it if I had made out the subpœna.

MR. FRAZER: Well, I never have seen such an impertinent subpœna. We are asked to bring all—or Mr. Carney is asked to bring all of the books, papers, records of the Committee for Industrial Organization, commonly known and described as CIO, since the CIO has started to function in the State of New Jersey, including all minutes kept, orders or bulletins issued, and the names and addresses of officers thereof, and also "bring with you books of account and roster of membership of the said CIO, its subordinate organizations or affiliates: Steel Workers Organizing Committee of the Committee for Industrial Organization, United Electrical Radio and Machine Workers of America and United Rubber Workers of America." That means that we are to bring the office over, and if they would let us know what relevant material they want from our files that would be one thing, but we certainly cannot be asked to bring

our office to this court room, it would be inconvenient for the Court, if for on other reason.

MR. MATTHEWS: I think they will find that office isn't so very big. That is a beautiful speech but that is our subpœna. But really most seriously so, won't you give me a right to have that amendment before me? After all, I am responsible now for what goes on in this cause. If I had that amendment, of course——

THE COURT: How long will you be with this witness, Dean Frazer?

MR. FRAZER: I have got about five or six minutes more. I am taking him chronologically.

THE COURT: Yes, I know.

MR. FRAZER: We have now passed the date that Sir John has insisted upon in January.

THE COURT: How long will you be?

MR. MATTHEWS: I think I will be a long while, I really do. I think I will be at least an hour.

THE COURT: Then you had better make the necessary arrangements on that for tomorrow. I will adjourn now until tomorrow at 10:30. Will you file the amendment, Dean Frazer?

MR. ERNST: If your Honor please, before you adjourn, this subpœna has been issued for tomorrow to a man whom we will put on the stand as our witness tomorrow morning.

THE COURT: Who, Mr. Carney?

MR. ERNST: Mr. Carney.

THE COURT: Is he the next witness following this?

MR. ERNST: Depending on how soon we get finished.

THE COURT: But does he follow this witness?

MR. FRAZER: No, we propose to have the Mayor on tomorrow; because of this delay we will probably not have the Mayor on until 11:30, depending in turn upon Mr. Matthews' length of cross-examination.

THE COURT: Yes, but you are going to follow Mr. Macri with Mayor Hague or with Mr. Carney.

MR. ERNST: It depends on the length of time that the cross-examination will take. Now, I am not concerned at the moment about that. My inquiry goes to the fact that it is a subpœna returnable tomorrow morning. I would like to find out from any one of the counsel for Mayor Hague and the City of Jersey City whether this is to be answered tomorrow morning or not.

THE COURT: The office is in Newark, isn't it?

MR. MATTHEWS: Yes, the office——

THE COURT: Obviously not, I would say.

MR. MATTHEWS: I think we will be very glad to consult the convenience of Mr. Carney and the records, and as to tomorrow we will say you don't need it to appear, but may the virtue of the subpœna last for 24 hours, particularly the duces tecum part.

MR. ERNST: Now, if your Honor please, we might as well clean up the question of subpœna here because we had a lot of trouble with subpœnas on the terms. We subpœnaed specifically certain permits or letters in regard to permit denials or applications. We were told that they would clean out tremendous numbers of documents and be equivalent to subpœnaing all the records of the Register's office. It turned out to be three little files of about 35 or 100 pages, 35 instruments. I can give you my assurance that these documents are fabulous are in size, that they are not obtainable at all by this witness to a great extent, that we will never answer a subpœna giving the names of the CIO membership

in a town which has treated them as they have according to the evidence. Now, I should imagine that there ought to be a discussion some time before this subpœna is returned as to the proper limits of these vague weasel words. Don't let's waste two days again on defining the terms of a subpœna.

MR. MATTHEWS: That statement by counsel is an affront to everybody. "We won't do it." "We won't do it."

MR. ERNST: We will not.

MR. MATTHEWS: You will do it under the order of the court, you will produce your records of the names of your CIO in New Jersey and in Jersey City.

MR. ERNST: Well, I just say we won't, because I know the law on the subject.

THE COURT: Anyway it needn't be made returnable tomorrow. I think it may have to be argued at some length.

MR. ERNST: Similarly with other subpœnas issued in similar blanket terms for the entire files of organizations, not only up to the date of the service of the petition, mind you—this subpœna, I should imagine, would seal the mouth of the defendant on his point as to the evidence running up to date, because he doesn't even in the subpœna say material up to the date of the service; the subpœna is without limit, runs back for years, three years maybe, up to today, I take it, because there is no limitation contained in it.

THE COURT: Have other subpœnas been served?

MR. ERNST: Yes, for whole office files.

MR. MATTHEWS: Yes, we want them.

MR. ERNST: Without specification as to what kind of material.

MR. MATTHEWS: They are very definitely specified.

THE COURT: Maybe tomorrow we had better set aside a day for subpœna day.

MR. ERNST: Thank you.

MR. MATTHEWS: But we want those records.

(At this point an adjournment was taken to Friday, June 10, 1938, at 10:30 A. M.)

Friday, June 10, 1938.

Case continued.

Appearances as before.

MR. FRAZER: I wish to file the amendment by way of supplement to the bill of complaint, sir.

MR. MATTHEWS: May I have a copy, Spaulding?

MR. FRAZER: I have one for you.

MR. MATTHEWS: May we look at it a moment, your Honor? Your Honor, please, without specification of facts, this amendment will be worthless. It apprises us of nothing. It asks that they be allowed to amend by saying "After the filing of the bill of complaint defendants, Frank Hague, Daniel J. Casey, Harry Walsh, the Board of Commissioner of Jersey City and their employees, agents and servants, continued and are still continuing, against plaintiffs and others similarly situated, the practices, activities, plan and conspiracy referred to in paragraphs 8 to 20 inclusive of the original bill of complaint herein, in violation of the Constitution of the United States and the other statutes and laws referred to in the bill of complaint."

That is simply a general allegation, an omnibus allegation, and not an amendment in any sense of the

word; and if your Honor should construe it as such, I now ask for a bill of particulars. I can't answer it if I don't. They can bring in anything.

THE COURT: It may be filed.

THE CLERK: I have filed it.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.) (Seal)

MR. MATTHEWS: May I make clear to your Honor, and may I make it clear for the record, that this is not an amendment; this is a subterfuge; and that I am entitled to a bill of particulars.

THE COURT: I wish, Mr. Matthews, you wouldn't use words so hard, like subterfuge.

MR. MATTHEWS: Pardon me, your Honor.

THE COURT: I say don't use uncomplimentary terms. Subterfuge is an——

MR. MATTHEWS: That is what I mean. There is no English word that can be used as a synonym for it. It is a subterfuge to lug in what is not pertinent to this issue, with respect to the Court. How will they understand me above if I call it by a name that does not mean what I meant. It is a subterfuge in the sense of something that is put in underneath, in order to deceive, and to allow a latitude that is unwarranted in a pleading.

This, your Honor, goes to the very essence——

THE COURT: It simply brings the bill of complaint down to date, that is all it does, as I read it.

MR. MATTHEWS: It brings it down to date by saying that in many other places the same, if your Honor please; that is all it says. It says from paragraphs 8 to 20 inclusive. It doesn't give us a single act.

THE COURT: If there was an attempt to introduce some evidence that has no connection with the paragraphs of the bill as originally written, then it would seem to me that your contention would be well taken, but as it is, I don't believe it is.

I have given you your exception.

MR. MATTHEWS: Well, now, at this time, if your Honor pleases, it becomes necessary that a reply be made, or an answer, to that omnibus amendment; do I understand that we have time, we were just served with it, to answer that amendment, and your Honor will consider it filed as of time?

THE COURT: Certainly, of course.

MR. MATTHEWS: Thank you.

MR. ERNST: Your Honor please, I would like to make a statement in regard to a purported service of a subpœna on Harry F. Ward. Mr. Ward has explained to me the circumstances of the alleged service of the subpœna. I want to make it clear I do not in any way charge the improprieties of the service against Mr. Hamill, corporation counsel; but I have advised Mr. Ward that he need not come into court in answer to the subpœna. I want to say to the Court, however, that at any time Mr. Hamill and counsel for the defendants desire Harry Ward, the president of the American Civil Liberties Union, he will be made available either for service of subpœna or on telephone call, withor

MR. HAMILL: I think that ought to go for all of the men of prominence who have, as we know, business of importance to attend to. There isn't any use of bringing them here merely to make up or add to the audience, and that is satisfactory to us, and I don't think there ought to be any difficulty about that with regard to other men, whoever they may be, who are under subpœna.

MR. ERNST: Thank you.

MR. FRAZER: Mr. Macri, will you take the stand.

SAMUEL MACRI, resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. FRAZER:

Q. I think yesterday afternoon we finished with the events of February the 10th, Consolidated Razor Company——

A. That's right.

Q. —and we were about to go to the events of February 14th as our visit to Police Chief Walsh.

A. Right.

Q. Will you resume your narrative from there?

MR. MATTHEWS: I want to object to this testimony as not relevant to this issue.

THE COURT: I gave you an exception, I think, last night.

MR. MATTHEWS: Yes, but I must have the exception now the new amendment is here.

THE COURT: I will give it to you now.

MR. MATTHEWS: Thank you.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Will you proceed, Mr. Macri?

A. Mr. Nicholas Kowitski and myself went to Chief of Police Walsh to get a permit for a CIO parade in Jersey City, for a CIO show that we was holding here in Newark at the Mosque Theatre. So when I talked to Mr. Walsh and asked him for a permit he said what did we want the permit for, and I said, "For the show people to come in through Jersey City on a parade." He asked me if I was

going to have banners on the trucks and cards and placards and I said, "Yes." Well, he said he didn't know and for me to come around next morning and he would give me a report, and I asked him if eleven o'clock was all right and he said eleven o'clock would be a good time.

Q. Now, did you do anything else that day after seeing Walsh?

A. I went to the Hudson County Turn Hall to rent that hall for a mass meeting and I didn't get the place when I mentioned the CIO.

THE COURT: Can you give the name of that manager?

THE WITNESS: The manager's name is Richard Link. I had been there previously trying to get the place.

Q. Now, did you go back the next day at eleven o'clock to see Chief Walsh?

A. Next day I went to see Chief Walsh and I went myself and when he admitted me into his room I asked him if he would give me a permit for the parade and Mr. Walsh looked at a blue book and started to read something about an ordinance and said no permit would be granted, and I asked him the reason why. He says, "No permit will be granted," and I asked him for a copy of the ordinance and he said, "Go and see the City Clerk." So seeing that I didn't get the permit I was ready to leave when he started to talk to me why didn't I be a decent fellow and he said, "You are always getting newspaper reporters and photographers to come in here and our police department is decent people." Then he accused me of posing for a picture in the "Life" magazine, and I said that I wanted to see the magazine and after he showed it to me I said, "It is a very good picture," and he said, "You posed for that picture," and I didn't say that I posed or didn't pose for it. Then I said to Chief of Police Walsh, I said, "Isn't this your office," pointing out of the picture where his

telephones were taken and also I pointed out to him the police department that had their picture there and I also pointed out to him the cathedral or the church that was an altar of $50,000 that was donated and his mansion in Deal, New Jersey. He says, "That's right, that's right." And then he came to the picture of the slum section and then he accused me of having Margaret Burke-White to come in there and take those pictures, and I said that I had nothing to do with Margaret Burke-White in taking the picture.

MR. MATTHEWS: I want to object at this point. This is all irrelevant to this issue.

MR. FRAZER: It is very important and very relevant.

THE COURT: It is the Chief of Police.

You may answer.

MR. MATTHEWS: Your Honor will allow me an exception?

THE COURT: Yes.

MR. MATTHEWS: On the ground that this is simply an attempt to introduce some extraneous facts that are not pertinent to this case; therefore irrelevant.

(Which exception was duly allowed and sealed accordingly.)

(Seal)

THE COURT: Go ahead.

Q. Go ahead?

MR. MATTHEWS: I have the exception, your Honor, on the record?

THE COURT: Yes, you have.

MR. MATTHEWS: I have been reading the record and there are four exceptions that I want to take up with your Honor that are not in the record. I have read it

carefully and made a note of every one of my exceptions; and I have it understood that there is an exception granted, please, in this instance?

THE COURT: You mean that the stenographer didn't get it?

MR. MATTHEWS: Maybe so, maybe it is no fault of either yourself or mine or the stenographer's, but I have made a note; the application for the exception was granted, but the exception is not sealed in the record.

THE COURT: Well, Mrs. Bergen is usually very meticulous about those things.

MR. FRAZER: I might say that an exception is hardly necessary in an equity proceeding. If your objection is upon the record, I think that is sufficient.

THE COURT: I think so. You know perfectly well, Mr. Matthews, that I would never be technical; I would never be technical.

MR. MATTHEWS: The Dean, you know, is not a dean of teaching. He is just a dean of presiding. I don't want to take my law from him, he is wrong too often. I will ask for an exception.

THE COURT: I understood he considered you one of his star pupils, Mr. Matthews.

MR. MATTHEWS: I can't hear you, your Honor.

THE COURT: I said I understood that he considered you one of his star pupils.

MR. MATTHEWS: I never studied under the Dean, thanks be to God. The Dean is about contemporaneous with me in years. I was once a teacher in the law school, but when it became the Newark University I resigned.

THE COURT: When he became dean, you resigned?

MR. MATTHEWS: No, he was dean—I helped him to become dean under the new set-up, if you want to know. There was very great difficulty about it. We had to drop somebody else. I, as one of the trustees, did my best for him. I thought Spaulding needed that job.

THE COURT: You now agree that it was an error, though?

MR. MATTHEWS: No, I wouldn't say that, not an error, Judge, so long as we want to continue it. I would say that it was great boon for Spaulding. The public will have to determine the value to them.

I have an exception?

THE COURT: Yes.

MR. FRAZER: After these gracious remarks, may the witness proceed?

THE COURT: Well, I fomented those remarks. Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

A. So when I had told him that I didn't have Margaret Burke-White to take the picture, he accused me of having Margaret Burke-White to take the picture, and it was getting pretty hot, and I thought it was about time to leave, since I didn't get the permit, and I was ready to leave for the door and he run around the desk and he stood right in front of the door and nailed me by the lapel of the coat, and started to push me around. Then he started to mumble, I don't recall just exactly what he said, and I left to go out, and the last thing he said, he said, "There isn't a decent hair on your head," and I told him, I said, "Now, I came here for a permit," and I left the place, and I didn't get the permit.

Q. Now will you turn to the events of March 24th with relation to the United States Gypsum Company.

A. On March 24th——

MR. MATTHEWS: The same objection, if your Honor please.

THE COURT: Yes, I have given you an exception.

MR. MATTHEWS: And I can save time by saying that in any testimony from this point on of dates after the bill of complaint, your Honor will allow me an exception?

THE COURT: Yes.

MR. MATTHEWS: To the testimony?

THE COURT: I have already allowed Mr. Hamill an exception under the same circumstances.

MR. MATTHEWS: I thought that was continuing.

MR. HAMILL: I didn't hear your Honor.

THE COURT: I said I had allowed you an exception to the same line of testimony from the witnesses.

MR. HAMILL: Oh, yes.

Q. Will you go ahead, Mr. Macri?
A. On March the 24th I went to——

THE COURT: Mr. Macri, first tell us, as I have asked you before, what the United States Gypsum Company is and where it has a plant and how many people worked there.

THE WITNESS: It is located in Jersey City on Henderson Street, at the foot of Henderson Street. What it actually makes I am not in a position to state at the present time, because I was in the midst of organizing those workers, and I was attempting to talk with those workers that date. So I didn't get the full particulars, just exactly what they produced. So I talked——

THE COURT: How many workmen?

THE WITNESS: Well, when they work full, they employ in the neighborhood between three and four hundred people.

THE COURT: All right.

—So I went to talk to one of the workers that I had a contact that they gave me his name as being one of the former officers of the organization, who happened to be the leader, and after I got done talking Mr. Nicholas——

THE COURT: Give us the name of that organization, will you?

THE WITNESS: They did belong to the American Federation of Labor at one time but they had broken away.

MR. MATTHEWS: I cannot hear the witness.

MR. FRAZER: Might I ask that counsel sit a little away from this table? We have conferences we wish to carry on, once in a while.

MR. MATTHEWS: I will never eavesdrop on your conferences, but when anybody uses the language that Ernst did yesterday I will repeat it to the Court.

A. (Continuing.) So after I got done talking to the worker I left the plant to go to my car and when I got to my car, which was near Grand Street on Henderson Street, I no sooner got in the car than a cruiser car pulled up and said——

MR. MATTHEWS: I object, if your Honor please, no identification of this person.

A. Yes, I have the number.

THE COURT: No, you must not——

A cruiser car, what do you mean by a cruiser car?

A. I mean the police car. I have the badge number of the two officers.

THE COURT: Read it, give it to us.

A. One of them was No. 17, another one was 829, and they said "Get out." So we got out. "Let me see your driver's license. What are you doing here?" I showed him

my credential as CIO organizer; they searched me, they searched Nicholas Kowitski who was along with me, and they made me open up the back of the car and they looked through the car to see if there was anything in it; after they got done searching they said "All right" and left me go.

Q. Did you have any other experience later at the United States Gypsum Company?

A. I did. On May 12th I went down there to talk to the same workers again and to distribute some of the CIO news, and while I was parked there to wait for the fellow that is supposed to come out, 4:30, one of the officers, which I haven't got his name, who was directing traffic, come over to me and knocked at the window and said——

MR. MATTHEWS: I object, if your Honor please, anything that was done or said by an unidentified person.

THE COURT: Was he in uniform?

THE WITNESS: He was in uniform.

THE COURT: Was he at a certain specific crossing?

THE WITNESS: Yes.

MR. MATTHEWS: I still object, that he is an unidentified person.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

A. (Continuing.) He come over and he said, "What are you doing here?" I showed him my driver's license. He said, "I didn't ask you for your driver's license." Then I took out my credential and showed it to him and he says, "What are you doing here?" I said, "I am going to talk to these workers." So he took my driver's license and credential and he started to walk away, and I said, "Wait a minute, Officer, let me have my credentials again." "Never mind, stay where you are." So I waited and about five or

ten minutes later he come back and he said, "Here you are, Mr. Macri, here is your cards" and he walked away.

Q. Mr. Macri, what has been the effect of this action of the police upon your organizational efforts?

A. It has hampered a whole lot the organization drive of organizing the unorganized workers in Jersey City because of the fear of the police watching our headquarters and also when it was in front of the American Home Products that this Fitzgerald would be walking or driving his car up and down and these workers saw the detective at all times and also the police that were stationed in front of the plant, that the workers were ascared to come to the office.

MR. MATTHEWS: Now, I ask that that be stricken out, that the workers were ascared to come to the office. That is a conclusion.

THE COURT: Yes.

Q. How about its effect upon your circular distribution?

A. What was that, Counselor?

Q. The effect of police interference upon your circular distribution.

A. The effect was that the workers wouldn't accept the circulars on fear of the detectives that was there because we had gotten a report that it was being carried back to the employer.

MR. MATTHEWS: I object, if your Honor please, as a conclusion and hearsay evidence.

THE COURT: Yes.

MR. MATTHEWS: I ask that it be stricken out.

THE COURT: Yes.

Q. They wouldn't receive them?

MR. MATTHEWS: Pardon be, your Honor please. His Honor had ruled on that. I asked that it be stricken. I thought his Honor had ruled on it.

MR. FRAZER: I was merely referring to the part that I understood his Honor had not stricken.

THE COURT: You cannot give—just the act, whether he refused to receive them or not, not their mental state.

Q. Now, Mr. Macri, do you remember the occasion when Representative O'Connell said that he was coming to Jersey City the second time?

A. Yes.

Q. That was at Pershing——

A. Pershing Field.

Q. —Field?

A. That's right.

Q. What date was that?

A. On May 27th.

Q. And were you at Pershing Field that evening?

A. I was.

Q. Will you state what you saw and what happened there?

A. I got to Pershing Field around seven o'clock thereabouts and there was an assemblage there of about in the neighborhood of four or five thousand people, the people were very friendly, I talked to a number of them, and around about half-past seven I saw an army of police officers marching——

MR. MATTHEWS: I object to the word "army", your Honor please.

THE COURT: I think that is a conclusion. The number.

Q. How many officers in your opinion constitute an army?

A. Well, I couldn't say. I should say that there was plenty of them, maybe four or five hundred.

THE COURT: I think Commissioner Casey said five hundred, didn't he? I think he said that.

MR. FRAZER: The witness' estimate is fairly accurate then.

MR. MATTHEWS: Of a regiment.

A. (Continuing.) Four or five hundred. They came to the——

THE COURT: A battalion; in the military sense, about a battalion.

MR. MATTHEWS: Corporal's guard.

A. (Continuing.) And each entrance to the Pershing Field was guarded by police officers numbering anywhere from eight to ten in some places, more in some places, maybe less, and in the middle of the field, the Pershing Field, they had police officers strung clear across the field, which is, I believe, about two blocks long. The officers were stationed maybe a foot apart, and when Jerry O'Connell came in around eight o'clock I happened to be maybe probably—I couldn't just exactly say the distance—maybe a hundred feet, maybe less, when I saw Jerry O'Connell going in, and then the mob and the people pushing them back out again. So after they had escorted O'Connell out of the place, out of the Pershing Field, I called up Carney and told him it looked like the thing was over, that Jerry O'Connell wouldn't be able to speak. I started to go back in the field and talk to Bob Harker and Nancy Cox; I was talking to them about the great number of people was there and also that it was obvious——

MR. MATTHEWS: I object to this conversation.

THE COURT: Yes, don't give your conclusions.

Q. Well, you saw Harker and Miss Cox, did you?

A. That's right.

Q. And did you remain with them?

A. No, after I got done talking to them, I left them and someone slugged me from behind after that and I didn't remember a thing; I was sent to the hospital.

Q. What was the next thing you remember?

A. How do you mean, Counselor?

Q. Well, how long before you knew anything further?

A. I didn't know just exactly how it happened, how I got to the hospital, until late Saturday night or the next day. On Sunday I was still groggy—I didn't know just exactly what took place until I was talking to the rest of the workers, the rest of the people that was over there, and I tried to get from them just exactly what happened.

MR. FRAZER: Cross-examine, Sir John.

CROSS-EXAMINATION.

By MR. MATTHEWS:

Q. Where do you live?

A. 78 Court Street, Newark.

Q. Who owns the premises at 78 Court Street, Newark?

MR. FRAZER: I object as immaterial.

MR. MATTHEWS: Very material; everything is material concerning the antecedents, whereabouts, origins, and so forth, of this man. We hope to connect him with the allegations of defense in this case.

THE COURT: Mr. Matthews, I think perhaps it is relevant what his economic or political beliefs might be, but I can't see that his personal affairs can be of any interest.

MR. MATTHEWS: Why, where he resides and who the proprietor of that place is, and the kind of place it is is very material. Now, Judge Clark, please, sir, may I urge upon you that I be given the latitude in cross-examination of this witness that he was given in telling his story on the stand? Now, I seek to find out who owns the premises where he lives to test his credibility.

THE COURT: Well, you don't think that that is a test, do you, Mr. Matthews?

MR. MATTHEWS: Certainly. It might produce evidence here that he doesn't reside there, as I only laterally in my own court——

MR. FRAZER: This witness——

MR. MATTHEWS: May I finish my argument—when a man insisted that he resided there, and I allowed the attorney to go into the ownership of the place. I was able to find, or the attorney was, that there was no such residence and as a matter of fact, since residence was jurisdictional in that case, I dismissed the case.

But the point is this: it is very pertinent, very relevant. It tests his credibility.

MR. FRAZER: The witness has already stated where he lived, so that purpose of credibility has been complied with.

THE COURT: Well, I will follow Judge Matthews and allow him to answer.

MR. MATTHEWS: Thanks.

THE COURT: But understand, Mr. Matthews, that his personal affairs are not to be gone into—with no witness.

MR. MATTHEWS: His personal affairs only insofar as they would affect the issues in this cause, that is all.

A. I don't know who owns the place. I only know that there is a superintendent there and his wife.

Q. What's his name?

A. I don't know his name. I never inquired.

Q. What?

A. I never inquired.

Q. To whom do you pay your rent?

A. I pay it to the superintendent or his wife.

Q. Do they live in the premises?

A. They do.

Q. Does Carney live there, too?

A. He does not.
Q. When did you come to that residence?
A. It might have been some time in January.
Q. 1938?
A. That's right.

THE COURT: Where did you live before that?

THE WITNESS: At Hotel Douglas.

Q. And how long did you live there?
A. Ever since May 13 of 1937.
Q. And where did you live before that?

MR. FRAZER: I object; long before any of the matters in this proceeding. He is not going to take him all the way back to Italy now, I hope.

MR. MATTHEWS: This man comes from out of the State of New Jersey in here——

THE COURT: Tell us where you lived. Sharon, you said, I believe, didn't you?

THE WITNESS: No, Allentown.

THE COURT: Allentown?

THE WITNESS: Allentown, Pennsylvania.

THE COURT: Yes.

MR. MATTHEWS: I want to find out where he lived in this vicinity after he came from Allentown. Now I am progressing back. I have arrived at the point of where he was at the Hotel Douglas for some time. Now my next question is:

Q. Where did you live before that?
A. (No answer.)

THE COURT: Was it in New Jersey, Mr. Marci?

A. You mean before I came to Newark?
Q. The Hotel Douglas.

THE COURT: The Hotel Douglas, yes.

A. I came from Pennsylvania; Allentown, Pennsylvania.

Q. All right. Now when did you come from Allentown, Pennsylvania?

A. May 13th.

MR. FRAZER: He said so a moment ago.

THE COURT: That's in the record already.

MR. MATTHEWS: May I not have my cross-examination——

THE COURT: I say I think that is in the record already.

MR. MATTHEWS: Whether it is or not——

MR. FRAZER: This is only delaying the case.

MR. MATTHEWS: You left your manners in the office, I think.

Q. Do you know Jimmy O'Donnell?

A. Who is that?

Q. Do you know Jimmy O'Donnell?

A. James O'Donnell?

Q. Yes.

A. Will you tell me what he does?

Q. Do you know a James O'Donnell?

A. Here in Newark?

Q. Do you know a James O'Donnell, from any place?

MR. FRAZER: I think the gentleman should be identified in some way.

MR. MATTHEWS: He may answer me whether he knows a James O'Donnell from any place.

THE COURT: He may know several.

MR. MATTHEWS: Well, he can tell me that.

THE COURT: Do you know more than one?

A. I know a James O'Donnell in Allentown.

Q. All right. How long have you known James O'Donnell of Allentown?

A. About two years.

Q. How long, Sir?

A. About two years.

Q. Two years. What is James O'Donnell's business?

MR. FRAZER: I object. Now this has absolutely nothing to do with credibility; it has nothing to do with any portion of my examination; it is a mere beclouding of the issue.

THE COURT: You will have to state your purpose, Mr. Matthews.

MR. MATTHEWS: What is that?

THE COURT: You will have to state the purpose of that question.

MR. MATTHEWS: The purpose is to show his connection with O'Donnell in a matter which is for him to testify to, because if he denies it I will confront him with the facts. Now I cannot reveal any further than that.

MR. FRAZER: Well, if he wishes to call him as his witness and to prove what he knows about O'Donnell, that's another matter; but I don't understand that one can set up windmills and then knock them down if they have no relevancy to test credibility.

MR. MATTHEWS: I stopped following Spaulding long ago, your Honor, but the proposition is this: that I have a right to search this witness, who is a plaintiff in the case, and is offered at this time as a witness to all of the allegations in the complaint. I have a very great purpose in this, and I think the witness will realize it even now, sir, as I start to question him, and to

foreclose me at this time to show his connection with people that we in defense say are behind this thing would be a grave injustice to these defendants.

THE COURT: You may answer.

A. What is the question.

Q. (Pending question read by the reporter.)

A. James O'Donnell worked in the silk mill at Dougherty and Wadsworth in Allentown, and he was the chairman of that shop.

Q. Do you know Joe Cunningham?

A. I don't know of a Joe Cuningham.

Q. Don't you know Joe Cunningham, a former Boston newspaper man?

A. Not that I know of, by name.

Q. Did you run a benefit for the strikers during the silk strike in Allentown?

MR. FRAZER: Now, I object. I think is going a long, long way on cross-examination. I see nothing in my examination: I see nothing on the basis of credibility that permits it.

THE COURT: What is the purpose of this?

MR. MATTHEWS: Your Honor.——

THE COURT: Is there anything discreditable in in that?

MR. MATTHEWS: I will show your Honor in the next few questions.

THE COURT: You may answer.

A. I don't know what the Counsellor means by benefit.

Q. Well, did you run something for which you charged admission, the proceeds of which were to go to the strikers?

MR. FRAZER: You mean this witness ran?

MR. MATTHEWS: "You" generally means the person to whom you are talking, the second person: are you, he, she or it.

Q. Go ahead.

MR. FRAZER: Now, may I ask the relevancy of that?

THE COURT: To show that Mr. Matthews knew how to parse, I suppose.

You may answer that.

A. I don't recall of ever running a benefit.

Q. Did you run any affair at all during that strike in Allentown?

A. We had dances.

Q. Yes.

A. In order to raise up a fund for the strikers, yes.

Q. Was O'Donnell interested with you in those benefits or dances or affairs to raise up funds?

MR. FRAZER: I object. I object to this whole line of testimony, sir, as irrelevant. Let O'Donnell come in here, of he wishes O'Donnell.

MR. MATTHEWS: Be patient, it is not our case yet. Mr. O'Donnell will be here.

MR. FRAZER: Well, you are not primarily proving your case, I take it, on cross-examination?

MR. MATTHEWS: No, that is why O'Donnell isn't here now.

THE COURT: Well, there seems to be, am I correct in saying so, some discreditable inference.

MR. MATTHEWS: An inference which would indicate that this witness' credibility must be taken——

THE COURT: I will let him answer. You may answer.

THE WITNESS: Your Honor, I see what the counsel is driving at, of a James O'Donnell, where I knew of two James O'Donnells: one was a chairman of the shop and the one he has reference to is another James O'Donnell.

THE COURT: I thought so.

THE WITNESS: I want to make that clear.

Q. Where does that James O'Donnell live?

A. He did live on Turner Street.

Q. In Allentown?

A. In Allentown.

Q. Now was he the one that was interested with you in the strike benefits or dances or whatever you want to call them?

A. He ran an affair to raise money for the strikers' benefit.

Q. And what was the name of the concern that you were conducting the strike for,—if I don't use the right term, please correct me,—or leading the strike for, what was the name of the concern, what textile concern was it?

A. United Textile Workers of America.

Q. But what was the name of the shop in which you worked that was out on strike?

THE COURT: Manufacturer, you mean, don't you?

MR. MATTHEWS: Yes, your Honor.

A. You mean the place that I worked?

Q. Yes.

A. I worked in the Phoenix Silk Company at that time.

Q. Was that the company that was on strike?

A. That's right.

Q. Were those the strikers for whom the dances and benefits were had?

A. There was a general strike they had for all the workers.

Q. In Allentown?

A. That's right.

Q. Now that you recall O'Donnell and that you see what I am driving at, as you say, does that refresh your recollection as to Cunningham?

A. I don't know the Cunningham that you have reference to.

Q. Did you ever know a Joe Cunningham, Mr. Macri?

A. I knew a Cunningham but he was a foreman in one of the shops, Jim Cunningham.

Q. Jim?

A. But I never knew him to be a newspaper man.

Q. Now, do you recall Mr. O'Donnell and Mr. Cunningham——

THE COURT: Which one now, the newspaper man or the foreman?

Q. Strike out Mr. Cunningham, he has not identified him. Do you recall Mr. O'Donnell and another coming to you with a cancelled check that you had received as your cut from the benefit?

A. That is a lie.

Q. Just answer yes or no now. Do you recall that?

A. I never got any money for any benefits.

Q. Now answer yes or no. Do you recall O'Donnell coming to you with a check which you had received and which had been paid out of the funds for the benefits for the strikers in Allentown in this strike?

A. Never received the check.

Q. You don't recall it?

A. Never received the check.

Q. Did you ever receive any money?

A. No, I didn't receive any money.

Q. Were you the treasurer of the funds?

A. I was not.

Q. Who was?

A. Elmer Kibber was the financial secretary of the Local.

Q. Who was the treasurer of the dance fund?

A. I do not recall.

Q. And do I understand you to say that O'Donnell had nothing to do with the dance fund?

MR. FRAZER: He said nothing of the sort.

MR. MATTHEWS: We will strike that out.

Q. Did O'Donnell have anything to do with the dance fund?

THE COURT: Which O'Donnell? We seem to have had two.

MR. MATTHEWS: The one he identified.

Q. Which one do you recall,—did you know whether O'Donnell had anything to do with the benefit fund?

A. James O'Donnell was put in charge to run the affair. He came in there with a proposition of raising money for the strikers. He had full charge and only to report to the strike committee, which was composed of the chairmen of all the shops which numbered in the neighborhood of between 35 and 40, the chairmen which constituted the strike committee.

Q. And that's all the connection that you had with it?

A. That's right.

Q. You never handled any of the funds or received any of them?

A. I did not.

Q. By check or by any other evidence of money?

A. I did not.

Q. All right. Do you know Catherine Hoffman?

A. I do.

Q. What is her business?

MR. FRAZER: Now, I don't know, I think there should be some statement made as to the relevancy of these questions, to go through the man's whole social life and ask whether he knows persons or doesn't know them.

MR. MATTHEWS: This isn't social.

THE COURT: State what it is.

MR. MATTHEWS: Your Honor, to state what it is ahead of time would be to forearm and forewarn this witness for my next question. Suffice it to say to the Court, I trust, the purpose of this again is to show his

connection with those elements we claim are the plaintiffs in this action.

THE COURT: So far, I don't suppose you have finished, but so far the O'Donnell episode doesn't seem to show anything.

MR. MATTHEWS: Well, if your Honor is patient there is a defense coming here.

THE COURT: I said so far. All right, go ahead, let him answer.

Q. What is her business?
A. She is the secretary.
Q. To whom?
A. Of CIO, to Mr. Carney.
Q. To Mr. Carney?
A. Yes.
Q. Where is her office?
A. 17 William Street.
Q. Is that in Newark?
A. That's right.
Q. Do you know Lena Davis?

MR. FRAZER: If counsel wishes the names and officers of the local organizing committee we will be very happy to supply it. I don't know what he is referring to now; it doesn't seem to me in any way to test this witness' credibility and certainly it has nothing to do with anything I asked on direct, and I object now strenuously to the further continuation of this type of examination.

THE COURT: You may answer.

Q. Do you know Lena Davis?
A. I don't know of no Lena Davis.
Q. You don't?
A. I don't recollect of anyone of that name.
Q. You don't. Don't know Lena Davis, never met her, is that correct?

A. I might have met her, I don't know her; if I would see her probably I would.

Q. Do you know who the state secretary of the Communist Party in New Jersey is?

MR. FRAZER: I object, that certainly is not cross-examination.

MR. MATTHEWS: This is to test the credibility of this man on Lena Davis.

THE COURT: No, I will sustain it.

MR. MATTHEWS: This is to test the credibility of this man as to whether he knows Lena Davis. I hope to show he does know her, I hope to show that there have been conferences between these people and I hope to show that she is state secretary of the Communist Party of New Jersey.

MR. FRAZER: Let us assume that all of that is true; what of it?

THE COURT: That is a matter of defense, Mr. Matthews.

MR. MATTHEWS: I don't know who this is, your Honor, but it is disturbing—Clendennin, eh—may I have your Honor's ruling because I was disturbed by that creature.

THE COURT: I sustain the objection.

MR. MATTHEWS: Your Honor will allow me an exception?

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

MR. MATTHEWS: And the purpose of the testimony was to test this man's credibility as to his knowledge of Lena Davis, that he does know her and that she is state secretary of the Communist Party in New Jersey.

THE COURT: You may offer that in defense and then I will rule on it.

Q. Are you today a member of the United Textile Workers of America?

A. Yes, the United Textile Workers of America were taken over by the TWOC, Textile Workers Organizing Committee, so I was a member.

Q. Are the United Textile Workers of America affiliated with the AF of L?

A. It was formerly affiliated with the AF of L, but it is affiliated with the Committee for Industrial Organization.

Q. And how long has that happened?

A. The latter part of 1935 or the early part of 1936.

Q. Now, I understand then that there is no longer a United Textile Workers of American affiliated with the AF of L, is that correct?

A. That's right.

Q. Now you worked in this Phoenix Silk Mill in Allentown, Pa., didn't you?

A. That's right, I did.

Q. And when did you cease working there?

A. Some time in the middle of 1931.

Q. Did you work elsewhere after that or did you then go with the CIO?

A. No, I worked in other plants.

Q. Where?

A. I worked in the Maxwell Silk Company.

Q. Pardon, I didn't hear you.

A. Maxwell Silk Company.

Q. Where?

A. In Allentown.

Q. Where else?

A. Sauqouit Silk Company in Bethlehem, Pa.

THE REPORTER: Please spell it.

THE WITNESS: S-a-u-q-o-u-i-t.

Q. Where else?

A. Hanover Silk Company.

THE REPORTER: H-a-n-o-v-e-r?

THE WITNESS: Yes.

A. (Continuing.): And the Sontag Silk Company.

Q. Where else?

A. And Belvidere Silk Company.

Q. Where is that?

A. Belvidere.

Q. Where is that, in what state?

A. New Jersey.

Q. When did you work there?

A. After the termination of the 1931 silk strike.

Q. The termination of the 1931 what?

A. The 1931 silk strike.

Q. Well, I thought you were giving me those places in the order of time. Do I understand that you left the Phoenix in 1931 or terminated your relationship there, then you went to the Maxwell?

A. No, I worked in the Belvidere plant.

Q. I see. How long were you there?

A. Only two nights and a half.

Q. What?

A. Two nights and a half.

Q. In what capacity did you work there?

A. As a silk weaver.

Q. Will you tell us why your employment was so short there?

A. Because of the fact that I got ruptured in lifting a weight and went to the hospital.

Q. What hospital?

A. The Allentown Hospital.

Q. Now, where did you next go after the Belvidere plant?

A. After I come out of the hospital I went to the Sauquoit Silk Company in Bethlehem.

Q. How long did you work at the Sauquoit Silk Company in Bethlehem?

A. I worked there till 1932, when, due to slack in business, I was laid off.

Q. Then please where?

A. Then from there I went to Edna Silk Company.

Q. Where is that?

A. Allentown.

Q. How long did you work there?

A. I worked there about two weeks.

Q. Why was that employment so short?

A. The wages were terrible.

Q. Then where did you go?

A. From there I went to Canover.

Q. And then where?

A. Sontag Silk Company.

Q. Where is that?

A. Allentown.

Q. How long were you with Hanover?

A. Where?

Q. How long did you work at Hanover?

A. *Han*-over?

Q. Yes.

A. I haven't got no Hanover.

Q. Hanover Silk Company. I am abbreviating it. I see I don't know the term.

How long did you work at the Hanover Silk Company?

A. I didn't work at the Hanover that I know anything about.

Q. Well, why did you use the word *Han*-over to describe the place?

THE COURT: We are wasting time. You did use a word that sounded a little like that. What is the name?

THE WITNESS: Sontag, I said.

THE COURT: I thought you said something like Hanover.

THE WITNESS: Canover.

Q. How long did you work at the Canover Silk Company?

A. I worked there about a month.

Q. And why was your employment so short there?

A. Because of the fact that they put on a third shift and I was the loom fixer and my employment was terminated because of laying off the third shift.

Q. And where did you go from the Canover Silk Company?

A. Sontag.

Q. How long were you at the Sontag?

A. I was there a week.

Q. And why was your employment so short there?

A. Because of the fact that the Sauqouit Silk Company management called me back to go back to work there since I was laid off there as a loom mechanic, loom fixer.

Q. Did you go back to Sautouit?

A. I did.

Q. How long did you stay there?

A. I stayed there till the 1933 national silk strike.

Q. And in 1933 did you go out on strike?

A. Yes, I did.

Q. And have you worked in any factory or at any trade other than organizer for unions since then?

A. Yes, immediately after the 1933 strike I got a job at the Roberson & Mumma.

Q. And where is that?

A. At Allentown.

Q. How long did you work there?

A. I worked there till the first of the year when I was given an assignment by the United Textile Workers of America as a CIO—I mean as an organizer for the United Textile Workers of America covering a 45-mile area from Allentown, Pa.

Q. Now, at this time were the United Textile an A. F. L. organization?

A. At that time they were.

Q. And you were given the job to organize them for CIO?

A. No, organize the workers in the United Textile Workers of America.

Q. And how long after you started that did the United Textile Workers of America cease to be an A. F. of L. organization?

A. I believe in the latter part of 1935 and the early part of 1936 nine organizations got together and formed the Committee for Industrial Organization to organize the mass production workers.

Q. You ran for office in Allentown, didn't you?

A. I did, I was a candidate for mayor on the Democratic ticket.

MR. FRAZER: What ticket?

MR. MATTHEWS: Democratic.

Q. What else were you a candidate for?

A. For councilman.

Q. On what ticket?

A. Democratic.

Q. And what else did you run for?

A. That's all I run for in the political field.

Q. How?

A. That's all in the political field.

Q. Were you elected?

A. No, I was not elected.

Q. What year did you run for mayor on the Democratic ticket?

A. 1935.

Q. What year did you run for councilman?

A. 1937.

Q. Can you tell me, please, what month the election was in 1937?

A. The Primaries were some time in September, I believe.

Q. And the General in November?

A. The General in November.

Q. Did you run in both?

A. No, in the Primaries.

Q. And your mayoralty venture, was that a Primary or a General election?

A. What is that?

Q. The venture for the mayoralty of Allentown.

A. Was in the Primary.

Q. Was in the Primary. Did you survive the Primary?

A. No, I came in second in the Primary.

Q. How many ran?

A. Three.

Q. Three; that wasn't bad.

Now, you said that Mr. Lewis, Mr. John L. Lewis, called you to Washington. Will you give me the date of that again?

A. On May the 10th we were called into Washington.

Q. What year?

A. 1937.

Q. Now at this time, May 10, 1937, what was your official connection with the CIO, if anything?

A. I was the field representative for the steel workers organizing committee in Allentown, Bethlehem, and surrounding towns.

Q. How long had you been that, prior to May 10, 1937?

A. I had been there since August 4th.

Q. 1936?

A. That is right.

Q. Now you were assigned by John L. Lewis personally, were you?

A. That is right.

Q. To organize unorganized workers in New Jersey?

A. That is right.

Q. And you were assigned to organize under Mr. Carney?

A. That's right.

Q. Now in the American Home Products Company, you told us on direct examination that in the latter part of

September or early October workers came to your office and said that they wanted to organize under CIO. Who were those workers?

A. I said yesterday that I would like to——

MR. FRAZER: Now, if it please the Court, I think in a case of this kind the identity of workers should not be disclosed and I would therefore object to the asking of this question.

MR. MATTHEWS: That's free speech with a vengeance. Now if your Honor pleases, it is absolutely necessary to have the identity of these workers.

THE COURT: Suppose as a result of their being identified they lost their jobs?

MR. MATTHEWS: There is ample remedy for them, if they lose their jobs.

MR. FRAZER: No, there is not.

THE COURT: Is it very satisfactory?

MR. MATTHEWS: Now, yesterday, you used that example, and I am going to ask for those names today very carefully, because they had been reinstated by the N.L.R.B., so if they have been reinstated by the N.L.R.B., I can't see why they are in any danger.

I want the names of these workers who came to him, because I want to show who they are and what they are, in plan with the general statement made in the defense that this man and his group were not organizing labor people, but organizing Communist people.

MR. FRAZER: Where is the defense to which you refer? Will you show me in your answer the defense to which you refer?

MR. MATTHEWS: May I have a ruling on that question? I have to show this. How will I ever test this man's credibility?

THE COURT: You are faced, Mr. Matthews, with an extremely serious issue, and, that is imperiling the jobs of working people.

MR. MATTHEWS: Where——

THE COURT: Wait a minute. Which in these times, as I think we all have to admit, is a serious thing. Now how we can protect their positions, we will have to carefully scrutinize.

MR. MATTHEWS: The solicitude of the court is really touching to me and——

THE COURT: I am not at all ashamed of it, Mr. Matthews. A solicitude for working people's jobs is something I don't think anyone should be ashamed of.

MR. MATTHEWS: Well, it is very easy for your Honor to sit there and say that, who really and truly was reared in the lap of luxury. Why shouldn't I be solicitous? I never took a case against union labor in my life. I have represented the unions all my life. I was born in a union shop. I am the son of a factory worker. So I have solicitude for the working man.

THE COURT: Well, if we both have solicitude, let us agree that we preserve their positions for them.

MR. MATTHEWS: I am going to preserve them, and I wouldn't be true to my father in Heaven if I didn't, my own natural father as well as my God. But by the same token, no Communistic group is going to persecute labor while I have a tongue in my head. That's why I volunteered my services in this case.

THE COURT: I said, Mr. Matthews, before you so kindly volunteered your services, that I thought that for the welfare of the United States I should be glad to go into the Communist issue at length.

MR. MATTHEWS: It isn't a question of going into the Communist issue. It is to show that this witness

here, with his tender solicitude, as your Honor thinks, for the workers, has been making a living for himself and has been representing not the workers, but those who would destroy the workers. Why is it, your Honor, today, that in this case the CIO people, who sat down all over the country and destroyed the working man in the eyes of the public, are now glorified under the false issue of free speech?

I submit, with respect, and out of the very bottom of my heart, and with all the power in my body, that I have a right to cross-examine this man, to search this man as to who those workers were.

Why, your Honor, yesterday you asked that question, because your Honor's mind is a mind of fairness. You wanted to know who they were. He said to you, "I don't want to tell you," and yet he tells you afterward that two were reinstated without pay and two were reinstated with pay; and they were reinstated: your Honor asked the question, after a proceeding before the N.L.R.B.; he said yes, your Honor.

Now, if that is true, your Honor, those names are not only pertinent and competent, but no harm can come to them.

THE COURT: Well, I must be sure of that fact, and I am not presently sure of it. All I am trying to do is to see that no harm does come to them.

MR. MATTHEWS: Then at that rate we can't ask for the name of a single person who allegedly has a job; and to deny these defendants that right so absolutely flusters me that I don't know what to say about it other than to put my objection on the record with every bit of strength I have.

THE COURT: If you will wait a minute, Mr. Matthews, we will try to work out a plan whereby they can be protected and yet their names be given. I did ask for their names and I think their names would be useful.

MR. MATTHEWS: I would be glad, your Honor; I would be glad to have them given to the Court in camera, in secret, and I shall refer to them as X and Y in examination, if that will help the Court, because I appreciate the Court's concern; but the Court must not allow that I——

THE COURT: We are not in disagreement about the matter; we are only in disagreement as to method.

MR. MATTHEWS: All right, your Honor. I will accept the Court's method.

Could I have those names given to the Court in camera, and then could I refer to them as A and B, you instructing the witness that such a one is A and such a one is B?

THE COURT: Can't that be done, Dean Frazer?

MR. FRAZER: I have no objection, if what Mr. Matthews means is that your Honor is to receive the names, and to designate them A, B, C and D, communicate the symbols to Mr. Matthews, so that he may refer to them as A and B, instead of Smith and Jones, and the examination be on that basis, with the knowledge between your Honor and Mr. Macri. I have no objection to that. I do not wish Mr. Matthews to have the names. I don't know where they will go when he gets them.

MR. MATTHEWS: That is a very generous statement from you, whom I have known all my life.

THE COURT: No, I think that is unjust to Mr. Matthews.

MR. MATTHEWS: You think it is unjust to me?

THE COURT: Yes.

MR. MATTHEWS. Well, I am afraid——

MR. FRAZER: I will withdraw it if there was anything unkind in it.

MR. MATTHEWS: Perfectly all right. I know you don't mean it. I think, your Honor——

THE COURT: We cannot overlook, Mr. Matthews, the fact that sometimes employers, whom I don't think either you or I admire, try to punish by way of reprisal the men who they think are trying to organize their factories. We can't overlook that fact.

MR. MATTHEWS: That is very true, your Honor, but by the same token it will do me no good.

THE COURT: If that is the reason that this witness does not want to give me the names, I wish to work out a method whereby those reprisals could not be inflicted upon the men.

MR. MATTHEWS: We appreciate, of course, that if he gives names of people and those people deny those facts then his credibility is seriously impaired.

THE COURT: Can't you give me the names, Mr. Macri?

THE WITNESS: Yes, I can.

THE COURT: All right. Will you write them down? Have you got a pencil

THE WITNESS: Yes, I have one.

(The witness complied, handing the paper to the Court.)

THE COURT: Do you know their addresses?

THE WITNESS: I have that at the office.

THE COURT: The witness has given me two names, Mr. Matthews. He says he also has their addresses in his office, if you want them.

MR. MATTHEWS: Well, the addresses, of course, would only be important to verify the truth of his statement.

THE COURT: Yes.

MR. MATTHEWS: But the names don't mean anything unless he has the addresses of them.

THE COURT: He says he has them.

Q. Will you produce the addresses for us?
A. Sure, I will produce them.

MR. MATTHEWS: Well, may I defer the cross-examination as to the identity of those people in order to test his credibility, that they were workers who came to him, until such time as the addresses are produced?

THE COURT: If you desire, yes.

MR. MATTHEWS: Thanks.

Q. Well, at any rate, Mr. Macri, how many of these workers came to your office and said they wanted to organize under the CIO?

A. Two of them had elected themselves as the spokesman for the rest of the group, and they came to our office——

Q. I am sorry. I didn't hear.

A. I say two of them came to our office for the purpose of getting the full information about the CIO, and then they took application cards to sign their fellow workers up in the plant and outside of the plant.

Q. I see. Had you been in contact with them at all before they came?

A. I had not.

Q. At that time was there any union in the American Home Products Company?

A. None, none.

Q. None at all?

A. None at all.

Q. Is there one now?

A. What semblance of organization that we have at the present time—members at large, but no local.

Q. So is your CIO membership without a local charter the only organization that American Home Products Company has had in the last five years, the only labor organization?

A. Well, the only thing that they have, as reported to me, is an employee social and savings club.

Q. Employee social and savings club?

A. That is right.

Q. Was it affiliated with anything beyond, or was it a unit standing alone?

A. A unit standing alone. They formed themselves through—the foreman and the bosses of the various departments got together and formed their social organization.

Q. Do you know when that was formed?

A. I do not recall.

Q. Was it after your activities started?

A. After our activities started.

Q. Is it still there?

A. Yes.

Q. Now you say that after your activities started the wages were raised from two to four cents an hour in that plant, seven days' paid, as I understood and read the testimony: what did you mean by that?

A. Seven paid legal holidays were paid; seven paid legal holidays were paid.

Q. I see.

A. And a week's vacation with pay.

Q. A week's vacation with pay?

A. That is right.

Q. And you said there were other concessions. Was there anything beyond?

A. Well, that is what I meant, by that concession.

Q. Then you say they discharged two workers. Now who were those two workers that were discharged, or four workers, better, that were discharged and reinstated?

MR. FRAZER: Weren't they the same——

THE COURT: Are those the names I have?

THE WITNESS: Yes.

THE COURT: I have those names.

MR. MATTHEWS: Those names should go in the record because those names, according to the testimony given to the Court here, were reinstated after a proceeding before the N.L.R.B.—two were reinstated with back pay and two without.

THE COURT: I suppose, Mr. Macri, that it is a public proceeding?

MR. MATTHEWS: Sure.

THE COURT: That N.L.R.B., so that their names already are known. Those are the two——

THE WITNESS: That's right.

THE COURT: Their names must be both a matter of record——

MR. MATTHEWS: Sure.

THE COURT: And I imagine in the newspapers.

Q. Who were those four people?
A. Sam Goldberg.
Q. Sam Goldberg?
A. That is right.
Q. Yes.
A. William Penesbene.

THE REPORTER: Will you spell it, please?

THE WITNESS: P-e-n-e-s-b-e-n-e.

Q. P-e n-e-s——
A. P-e-n-e-s-b-e-n-e.
Q. That's two. Who are the other two?
A. And Jose O'Neill.
Q. Jose, J-o-s-e?
A. Jose O'Neill, that's right.

Q. And the other one?

A. And the other one, I just don't recollect at the present time.

Q. Can you get that name for us?

A. I can get that name.

Q. And will you?

A. Yes.

Q. Thank you. Now which were the two that were reinstated without pay?

A. Without pay was Jose O'Neill and the other fellow; Sam Goldberg and William Penesbene were reinstated with pay.

Q. Why was the distinction made?

MR. FRAZER: Now, I object.

THE COURT: I suppose that is in the record of the NLRB, Mr. Matthews. I don't know.

MR. MATTHEWS: Well, if he knows, he is entitled to tell me.

MR. FRAZER: What is the significance, if he does know?

MR. MATTHEWS: Very, very significant.

MR. FRAZER: It is just taking time.

THE COURT: I think you can produce the record of the NLRB.

MR. FRAZER: We have an important witness to get today, if Mr. Matthews will let us reach him.

THE COURT: I think that's in the record, Mr. Matthews, of the NLRB.

Isn't it, Mr. Macri?

THE WITNESS: That's right.

MR. MATTHEWS: I am entitled to cross-examine, to ask this witness the reason why they were reinstated, if he knows, without pay, and the others, with pay.

THE COURT: I will allow you to introduce the record.

MR. FRAZER: He didn't make the distinction. It is a matter of record in the NLRB, if he wants to find that out.

THE COURT: I will sustain the objection. You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Do Goldberg and Penesbene and Jose O'Neill and the unidentified fourth work for the American Home Products Company?

A. At the present time Sam Goldberg, after he was reinstated they found a technical excuse and discharged him again, and we have that case filed with the National Labor Board. William——

Q. Now, will you answer my question and please don't volunteer, because I asked you a very plain question.

MR. FRAZER: He is answering it.

Q. Do these——

MR. MATTHEWS: I don't mind the interruptions, if Frazer has gone haywire over night that's not my fault, but I have asked a plain question that requires an answer of yes or no.

Q. Now do these men, these four men, work for the American Home Products Company now? Yes or no.

A. At the present time?

Q. Yes.

A. No.

Q. Who do not work for them now? Any of them work for them now?

A. No, they were laid off and fired.

Q. All right, when?

A. About a month and a half ago or more.

MR. MATTHEWS: Now, I will ask your Honor or call to your Honor's attention the story that he didn't want to give you the names of these people because they might lose their jobs, and yet they haven't got their jobs.

THE COURT: I think he was talking about different people, Mr. Matthews.

MR. MATTHEWS: Oh, no; he was talking about the people—I will get the record.

MR. MATTHEWS: Oh, no, he was talking about the people—I will get the record.

MR. FRAZER: It seems to me it is not proper for a counsel to sum up his points in attacking credibility during examination. He may make his points and reserve them for discussion later but not do it while examining the witness.

MR. MATTHEWS: I am not making any points, I am calling the Court's attention to the fact, which I know the Court will appreciate, that this witness said he didn't like to give the names of these men because it might affect the men. Now he says they don't even work there.

You turn to it and I will come back to it. It is the testimony as to the American Home Products Company (handing record to Mr. Hershenstein).

Q. Where does Goldberg live?

THE COURT: He said he had those addresses, I thought, Mr. Matthews, and would give them to you later.

MR. MATTHEWS: No, he had the addresses of the two that came to solicit him to organize.

THE WITNESS: He lives in New York but I don't know just exactly, I think it is 1612 Park Place.

Q. Is that a residence, 1612 Park Place?
A. That's right, an apartment.
Q. Do they all live there, those four?
A. No.
Q. Where does Penesbene live?
A. In New York also
Q. Where does Jose O'Neill live?
A. In New York; it might be in Brooklyn.

THE COURT: Is his name H-o-s-e—Jose—is he a Spanish gentleman? It is O'Neill.

MR. MATTHEWS: I think so. We don't have O'Neills with Jose, J-o-s-e. We have others with Patrick.

Q. They all live in New York then, don't they?

MR. MATTHEWS: I am deferring a moment——

(Mr. Hamill speaks to Mr. Matthews aside.)

(Side bar discussion between counsel for the parties and the Court.)

MR. ERNST: Your Honor please, I would like to make a statement: the suggestion has been made that the Mayor is ready in Court. I indicated yesterday and will indicate now that we have an intervening witness, possibly two; they should not take more than twenty minutes. Mr. Hamill wants to know who they are. I will say who they are to see if we can accommodate the Mayor. They are representatives of the National Lawyers Guild of Hudson County. Their testimony should be brief and only go to the point that the National Lawyers Guild could not get a hall. We are perfectly willing to advise now that we will put those witnesses off to another day if we could get an estimate, even with any creditable figure of time in it, as to the length of time that this cross-examination will continue. We do not intend, however, to commit ourselves as to an intervening witness unless Mr. Hamill will tell us the ap-

proximate length to which he is going. I would like to accommodate the Mayor in this respect.

MR. MATTHEWS: Well, if you do then I am willing to defer the cross-examination and you may put the Mayor on now.

MR. ERNST: No; we want this finished if you will tell us how long.

MR. MATTHEWS: I will take as long as it is necessary for my case and if he wants to accommodate the Mayor—and the Mayor isn't going to fall for that bunk—I now offer to defer the rest of my cross-examination until after the Mayor has testified.

MR. ERNST: You refuse to accommodate the Mayor by merely indicating your estimated length of cross-examination. I thank you.

MR. MATTHEWS: You are as welcome as the flowers in Jimmy Walker's May.

THE COURT: Go ahead, Mr. Matthews.

By MR. MATTHEWS:

Q. Now, you didn't organize a CIO local in that plant, you say, of the American Home Products?

A. Because of the interference.

Q. Now answer yes or no.

A. Well, I will have to elaborate it.

Q. No, you are not going to elaborate on that question. You didn't organize one, did you? Answer me yes or no.

A. How could we with the interference?

MR. MATTHEWS: I ask that the witness respond your Honor please, in a responsive manner.

THE COURT: The answer is no.

Q. All right, that is your answer, no, that the Court just gave me, isn't it?

A. I couldn't organize it.

MR. MATTHEWS: The Court has said your answer is no. All right, he shook his head (to the reporter).

Q. Now, on the 26th of October you parked your car at ten o'clock in the morning in Jersey City and you came out at 2:05 in the afternoon and there was a tag on your car; what kind of a tag?

A. For parking overtime.

Q. What did you do with it?

A. And there was no parking zone.

Q. You have answered my question. What did you do with the ticket?

A. I took the ticket and gave it—called up our attorney, Rothbard, and told him what to do with it and he said to send the dollar—that is probably just what it cost, and I called up the lieutenant or segeant over there and asked him how to dispose with it and if it was all right for me to send the money and they said, "Yes, send the money and the ticket and it will be O. K."

Q. So that's the end of the tag episode, is it? October 28th. now, that is when you said that you had a conference arranged with the Standard Cap & Seal Company to negotiate an agreement, is that right?

A. That's right.

Q. You did negotiate an agreement, didn't you?

A. We finally did.

Q. But you staged a sit-down strike before you did, didn't you?

A. I did not stage no sit-down strike.

Q. Wasn't there a sit-down strike in that factory?

A. The workers themselves stopped working.

Q. Yes. Did they stay there and did the police have to put them out at night?

THE COURT: Where is this factory?

MR. MATTHEWS: Standard Cap & Seal Company.

MR. FRAZER: If he was there and knew about it.

MR. MATTHEWS: Now, I object to any prompting of this witness; he can answer the question.

MR. FRAZER: Not at all.

MR. MATTHEWS: He was there, I will tell you that.

MR. FRAZER: All right.

Q. Didn't Captain Walsh and the police come and put the workers out at ten o'clock at night?

A. I wasn't there.

Q. You weren't there when Captain Walsh put the workers out? Didn't you tell Captain Walsh that you had permission for them to stay there, Chief Walsh rather?

A. I did not.

Q. You didn't. Don't you know that they sat down in that factory and were put out by the police?

A. I only know the accounts that was told to me by the president of the local when he called me up at my hotel and said that the police come in and evicted these people after the employer had agreed to leave—Mr. Hilsdon had agreed to leave those workers in the plant.

Q. Don't you know, Macri, that Mr. Hilsdon told the police to put the men out, that were sitting down on his factory?

A. Mr. Williams, the president of the company, said that he did not call the police in.

Q. Don't you know that he called them and ordered them put out?

A. I am going by Mr. Williams when I took that matter up and he said no, that he didn't call the police, the police come in themselves.

Q. But they were sitting down in the factory, eh, at night?

A. I don't know as they were sitting; I was negotiating an agreement with the management when I came there.

Q. Where was the management?

A. In the office.

Q. Where?

A. At 150 Bay Street.

Q. Where was the factory?

A. 150 Bay Street.

Q. When were you negotiating?

A. When I was called up in the morning at ten o'clock.

Q. How long were you there?

A. I was there all day negotiating over the phone with Mr. Williams.

Q. When did you leave there?

A. I left there at 8:30.

Q. Were the workers still sitting in the factory when you left?

A. That was the understanding.

Q. Were they still sitting in the factory when you left?

A. They were still there.

Q. Yes. So when you were giving the police captain a lecture on constitutional rights you didn't think about the time you had your strikers sit down in a man's factory in Jersey City, did you?

A. I didn't——

MR. FRAZER: I wish he wouldn't argue with the witness.

MR. MATTHEWS: That is not arguing with the witness, that is calling his attention to his fervent plea for constitutional rights.

Q. What was the date of the sit-down strike in the Standard Cap & Seal Company in Jersey City?

MR. FRAZER: I object to the term.

MR. MATTHEWS: Of course, you do.

MR. FRAZER: There was no sit-down strike.

MR. MATTHEWS: Of course, you do. Well, if workers are sitting in a man's factory till ten o'clock at

night and have to have the police put them out, I don't know whether you call it a sit-down, lie-down or stand-up strike.

Q. When was that?

A. Some time in the early part of December when they went out on a strike.

Q. December what year?

A. 1937.

Q. Don't you know the exact day? It was the same day that you had the conference, wasn't it?

A. Oh, no.

Q. Didn't they sit down the same day that you had the conference?

A. I was called in the morning by the president of the local——

Q. Answer my question. Didn't they sit down the same day that you had the conference, that you said the police followed you to the conference?

A. I did not, I didn't say any such thing.

Q. Was the strike the same day that you had the first conference with the Cap & Seal Company, October 28th, in other words?

A. October 28th I had the conference with the official of the Standard Cap & Seal when the police stopped me and searched my car.

Q. Now, in December, 1937, you say this sit-down strike was.

A. I didn't say it was a sit-down.

Q. I know you didn't but I did, when they stayed in till ten o'clock at night and had to have the police put them out; that was in December 1937?

A. That's right.

Q. Had you been negotiating from October 28th to December, 1937, with the Standard Cap & Seal Company?

A. With the official of the company, yes.

Q. And when did the men go out on strike, after they had sat down till ten o'clock?

THE COURT: We will adjourn now, Mr. Matthews.

(Ten minute recess.)

(Following a short recess.)

Q. Now on November 29, 1937, you said you left your room at five o'clock. Was that five o'clock in the morning?

A. That is right.

Q. With McGinn, Foley and Barry, is that right?

A. Correct.

Q. You went to distribute literature, is that right?

A. That is right.

Q. In Jersey City?

A. That is right.

Q. Now the policemen after you met them took you out of the city, did they?

A. They did.

Q. Yes. Then you got out and went across the Pulaski Skyway in a taxicab and came back in again to do the thing that you were told not to do by the policeman? Is that right?

A. That was our constitutional right——

Q. Answer me yes or no. Then you got a taxicab and went back into Jersey City to do identically the second time what the police had forbidden you to do, is that correct?

A. Just a minute. I—over the Pulaski Skyway I went with my car——

Q. All right.

A. And I parked my car in a lot and went in a taxicab from the lot down to the United Steel Workers Office.

Q. Now, will you answer my question, regardless of your method of itinerary, or your mode of travel, you went back to do the identical same thing that the police had taken you out of the city for doing, is that correct?

A. I went to distribute literature, which was our constitutional right.

Q. Answer my question.

MR. MATTHEWS: If your Honor please, may I have him answer that question?

THE COURT: Would you mind just a minute, please.

(At this point the Court took up another matter at side bar.)

THE COURT: Will you read the question now please?

(Pending question and answer read by the reporter.)

MR. MATTHEWS: I ask that that be stricken out, and I ask for a responsive answer.

THE COURT: The answer is yes.

MR. MATTHEWS: The answer is yes.

Q. Now when you came back the second time, you said that you went to the office of the—was it the steel workers office or where?

A. The United Steel Workers office.

Q. The United Steel Workers office. And you said when you got there there were a lot of photographers and newsreel men and newspaper men there?

A. That is right.

Q. How did they get there?

A. They came there knowing that we were going to distribute literature.

Q. Who told them that you were?

A. Some of the press.

Q. Who told the some that told the others?

A. (No answer.)

Q. Did you?

A. What?

Q. Did you tell some of the boys you were going to distribute?

A. I told some of the press.

Q. Whom did you tell?

A. George Faust.

Q. What paper?

A. The *Peoples Press.*

Q. The *Peoples Press.* Who else?

A. Philadelphia *Record* and *Times*, I guess.

Q. The Philadelphia *Record* and the Philadelphia *Times?*

A. The New York *Post.*

Q. The New York *Post?*

A. That's right.

Q. And who was there from the New York *Post?*

A. I don't know who were there; I knew there was a lot of photographers there and newspapers.

Q. And newspaper men and newsreel men, you said?

A. That's right.

Q. So you were staging a public exhibition the second time you came back, is that it?

MR. FRAZER: I object to that: that is a mere conclusion.

THE COURT: That is characterizing it, Mr. Matthews.

Q. Were you stating a public exhibition the second time you came out?

MR. FRAZER: I object to that.

THE COURT: Those are words too vague, Mr. Matthews. Sustained.

MR. MATTHEWS: I don't know how to make it any more explicit.

THE COURT: You asked whether photographers and newspaper men were there; he said yes.

MR. MATTHEWS: Yes. I asked him now when he came back the second time whether he was staging a public exhibition.

Q. Were you?

A. I did not.

MR. FRAZER: I suppose there would have no exhibition if there hadn't been assistance from the defendant. It would have been very tame. They couldn't have staged a public exhibition without some assistance from the defendant.

MR. MATTHEWS: Apparently Spaulding has never read of the exhibitions that this CIO have staged. Go to Cleveland, go to Detroit, go to Pennsylvania, and learn. You should have read before you went into your case.

Q. Well, now, who were the newsreel men, who got them there?

A. No doubt from one to the other they were notified.

Q. And when you got there you went out to distribute your literature and you were arrested, were you not?

A. Went upstairs and helped to——

Q. But after you went out with your literature you were arrested?

A. After we walked into the building——

Q. Answer me. After you went out of the building with your literature you were arrested?

A. That's right, after we went down Exchange Place.

Q. All right. Now, you were told to go out again, weren't you, but you went right across the street?

A. I asked them if I——

Q. Now answer my question. You were told to go out of the city, weren't you? You said so on direct.

A. I was.

Q. You didn't go out of the city, did you?

A. I did not.

Q. No, you went right across the street, didn't you?

A. That's right.

Q. And proceeded to do for the third time the thing that the police had forbidden you to do the first time?

A. We had a right to distribute——

MR. MATTHEWS: Will your Honor strike that out please.

Q. You proceeded to do for the third time the same thing that the police had forbidden you to do the first time, isn't that correct?

A. Went across the street to distribute——

MR. MATTHEWS: I ask for an answer to that, your Honor please. I want to show the recalcitrancy of this gentleman in the face of the law. It is up to them to show whether the law was or was not——

THE COURT: You weren't here, Mr. Matthews, but we also went into all that with the other witnesses who were distributing literature. The fact seems to be that this ordinance, if applicable, had no method for testing it, had no clause whereby they could obtain a permit other than to distribute and be arrested for so doing. That is what happened and the certiorari was allowed by the Supreme Court.

MR. MATTHEWS: That is perfectly all right.

THE COURT: Apparently it is pending and afterwards, as you probably know, the United States Supreme Court declared a similar ordinance unconstitutional.

MR. MATTHEWS: I am familiar with that decision—It came down, I think, in March, and the ordinance is, with respect to your Honor, "similar," if we use "similar," in the broad sense.

THE COURT: The only difference being that the Georgia ordinance, all of which I pointed out the other day, has a provision for asking a permit to distribute.

MR. MATTHEWS: Now, may I ask my question for the third time?

MR. FRAZER: May I ask what advantage there is in having the witness say it for the third time? He has said it twice already.

THE COURT: All the witnesses, Mr. Matthews, that were at this distribution occasion, so to speak, admitted or declared that they went there for the express purpose of testing the ordinance. Now, this witness admits the same thing, I understand.

MR. MATTHEWS: I don't care anything about that, if your Honor please, neither will the Court above in judging this witness. The Court above might well say what your Honor isn't saying presently—"What right did this man have to take the law into his own hands?"

THE COURT: They might well say it but he says he went there for the purpose of testing the ordinance, if you call that taking the law in his own hands.

MR. MATTHEWS: That is for the upper Court to say; they may disagree with you, they have with me.

THE COURT: He has answered the question, he went there for that purpose.

MR. MATTHEWS: All right, that is what I wanted, a responsive answer. So the record does show, as your Honor says.

THE COURT: He says it as all the other witnesses have said it.

MR. MATTHEWS: I don't care about the other witnesses. I want Macri to say that for the third time he went across the street and did again what he had been forbidden to the first time. That is correct?

A. I went across the street and saw McGinn——

Q. I object, and ask again isn't that what you went across the street for?

A. Yes.

MR. FRAZER: He did slightly different things.

MR. MATTHEWS: Yes, you are doing different things today. You had better be careful. You are going to get it soon.

MR. FRAZER: May I ask that I be not threatened in Court?

Q. Now that was the third time. You were arrested——

MR. FRAZER: May I be not threatened in Court, if your Honor please?

MR. MATTHEWS: Oh, Spaulding! Isn't that funny, that I should threaten you! My dear boy! I might threaten you with osculation, perhaps, but not really threaten you.

THE COURT: That is a terrible threat, Mr. Matthews.

Q. You were finally arrested, weren't you?
A. I was arrested.

MR. MATTHEWS: Now, that would come out of your book.

Q. You were finally arrested, eh?

MR. ERNST: I will advertise it.

MR. MATTHEWS: Yes, you will advertise it before you get through here.

Q. You were arrested finally, weren't you?
A. That is right.
Q. And you got bailed the next day?
A. That is right.
Q. Now on February 10th you went to the Consolidated Razor Company and you said that two workers came out of the plant, and when they came out they told an officer that you, or two men, better, were molesting them; that is true, isn't it? That was your testimony, wasn't it?
A. That's what they said, yes.
Q. Yes.
Q. Who were they, do you know?
A. I don't know. They are two foremens, two bosses.

Q. You don't know who they are?

A. No.

Q. And in your capacity as investigator or organizer for the CIO, you never found out, eh?

A. The thing was that——

Q. Answer me, you never found out?

A. The only thing I found out was through the lady who happens to be in charge of the building; she told me that they were two bosses.

Q. So that you never got any further information than that; you never found out who they were?

A. I did not.

Q. No. You could have found out, couldn't you?

A. (No answer.)

Q. What?

A. I might have, if I had made a thorough investigation.

Q. Yes. And you did not. Now when the workers who came out of the plant protested that you were molesting, or these two men were molesting them, the police officer took you to the station, did he, in your car?

A. The officer did take me to the station.

Q. Yes. And when you got to the station—I think the fellow's name was Captain Gordon, wasn't it?

A. Captain of the precinct.

Q. Yes. He said, "We can't hold them. Let them go." Is that correct?

A. After he had asked for identification.

Q. Yes. And after the investigation he said, "We can't hold them, let them go." Is that right?

A. Yes.

Q. What did you do? You went right back to the plant again, didn't you?

A. I did.

Q. Yes.

A. To go down and talk to the workers.

Q. You went right back again to talk to the workers, despite the fact that two workers had complained that you were molesting them?

A. Well, these two, the two workers were bosses——

Q. That's correct, isn't it? Answer me yes or no.

A. What is your question again, please?

Q. You went right back to the plant again, after Captain Gordon let you go—is that correct?

A. I went back to the plant.

Q. Yes. And when you got back to the plant the same Captain Gordon, as I understand it, came to your side, while you were there, is that right?

A. He came there with his machine and just as soon as I parked——

Q. Never mind that. Just answer my question. Is it the same Captain Gordon who came?

A. That is right.

Q. That is right. Is there a CIO union in the Consolidated Razor Company?

A. There is not. We didn't get a chance to organize one.

Q. All right. That is the answer, "There is not." And you were starting to organize in February 1937, is that right? February 10, 1937, rather, is that correct?

A. February 10th.

Q. Was there any union in the Consolidated Razor Company?

A. None that I know of.

Q. Now, do you know whether there was or not, or are you doubtful about it?

A. No, there wasn't any, any organization in the plant that I know of.

Q. None that you know of. And it was that occasion that you proceeded to tell Captain Gordon about constitutional rights, wasn't it?

A. After he had told me that I couldn't park there, couldn't talk to the workers.

Q. Was that the occasion that you proceeded to tell Captain Gordon——

A. On February 10th——

Q. About constitutional rights?

A. That is right.

Q. That was two months after you staged a sit-down strike in the Seal and Cap Company, is that correct?

MR. FRAZER: I object. I object. There is no testimony to that effect, and I object to the qualification of the witness' language by Mr. Matthews, putting words in his mouth which he never said.

THE COURT: As I understood this witness, he said that he had nothing to do with the episode you speak of.

MR. MATTHEWS: You have a right, of course, to believe or not believe——

THE COURT: I said I understood the witness to say——

MR. MATTHEWS: Yes, yes.

THE COURT: I didn't say anything about my belief.

MR. MATTHEWS: Oh, he was there. He told me he was there, trying to organize them, and he told me that the bosses had called up and that they had said it was all right for them to stay there, but that the police had put them out. Now you can call that a sit-down strike or not, if you want. But my opinion is that that question is perfectly proper, to ask him—this lecture to the police captain on constitutional rights was two months after the sit-down strike in the Cap and Seal Company.

MR. FRAZER: After the occurrence.

THE COURT: Well, that is a fact.

MR. FRAZER: After the occurrence.

THE COURT: But I don't think there was any testimony that he staged it, Mr. Matthews.

Q. Was this lecture, that you proceeded to give to this captain, two months after the sit-down strike in the Cap and Seal Company?

MR. FRAZER: In the first place, the witness has not said anything about a lecture. That is another gratuitous definition. He spoke to Captain Gordon——

THE COURT: He said there was a discussion.

MR. FRAZER: There was a discussion between him and Captain Gordon which involved the question of constitutional rights, not a lecture.

THE COURT: Substitute the word "discussion," Mr. Matthews.

MR. MATTHEWS: We will take the word "lecture" out.

Q. This was two months after your discussion with Captain Gordon, in which discussion you had told him, I take it in the same tones you used on the stand here today, about what you thought of constitutional rights. It was two months later, wasn't it?

A. It was on February 10th.

Q. Yes. And your discussion on constitutional rights was on what date?

A. February the 10th.

Q. And the Crown and Seal Company stay-in, where the people stayed in and had to be put out by the police, was December——

A. I want to say——

Q. Answer. Was it December? Forget what you want to say.

A. The workers stopped work.

Q. Yes.

A. On December—around December.

Q. Answer my question.

MR. MATTHEWS: I move that that be stricken out.

Q. Was that two months after——

MR. FRAZER: He is trying to give you the date.

Q. Was that two months after——

MR. FRAZER: He is trying to give you the date, Mr. Matthews.

Q. Was that two months after the gentlemen and ladies in the Crown and Seal Company plant had remained until ten o'clock at night and had to be put out by the police? Answer yes or no.

A. Now, Counsellor——

Q. Answer yes or no.

A. I say——

Q. Answer yes or no.

A. The conversation——

Q. Answer yes or no.

MR. MATTHEWS: I submit, your Honor.——

A. The discussion——

MR. MATTHEWS: I submit I am entitled to an answer yes or no. I ask that the witness be made to answer yes or no.

THE COURT: Chronologically the answer is yes.

MR. MATTHEWS: Well, pardon me, your Honor. Your answer won't do the Circuit Court of Appeals any good.

MR. FRAZER: Might I ask——

MR. MATTHEWS: It won't do them any good and it might do them a lot of harm.

MR. FRAZER: Might I ask the witness a simple question?

MR. MATTHEWS: I object to his interjecting and ask a ruling on my question—a yes or no answer to that question.

THE COURT: Yes, you may answer.

A. It was on February the 10th, the discussion——

Q. Was it two months after the time that the workers stayed in the plant and were put out by the police? Answer yes or no.

THE WITNESS: Your Honor——

MR. MATTHEWS: I object to that.

THE COURT: He is asking you a question about the calendar and of course the answer must be yes or no.

A. But the thing is that he is bringing in the question of staging an affair at the Standard Cap and Seal, and he is trying to pin me down on that question, where the thing is that the incident that took place between Captain Gordon and myself, the discussion on the constitutional rights, was February the 10th.

THE COURT: Before, you mean?

THE WITNESS: No, on February the 10th was the discussion with Captain Gordon.

THE COURT: Well, when was this episode of the cap—what is the name?

MR. FRAZER: Cap and Seal.

THE COURT: Cap and Seal. When, chronologically?

THE WITNESS: When the workers went on strike.

Q. When was that?

THE COURT: The date; all we want is the date.

A. I don't know the date.

Q. You gave it on direct as in December.

A. In December; I said in December.

Q. 1937. Now, I ask you again, was the episode of the Cap and Seal, where the workers stayed in until 10 o'clock

at night and were put out by the police, two months prior to your talk with Captain Gordon about constitutional rights, answer yes or no.

THE COURT: Count the days, please.

A. It was two months afterwards.

Q. The episode at the Cap and Seal was two months after the talk with Captain Gordon or two months before it?

A. You mean the Standard Cap and Seal?

Q. I mean the episode in which they stayed in the place and were put out by the police. Was that two months before your talk with Captain Gordon or not?

A. Two months before.

Q. Yes. Finally that witness answered a question. Have you any other employment except as organizer for the CIO business?

A. No other employment.

Q. How long have you known Carney?

A. Since May 10, 1937.

Q. Then you were not in Detroit or those other places with Carney, were you?

A. I was not in Detroit.

Q. You weren't in the Rubber Company strike with Carney?

A. I was not. I don't know anything about the strike end.

Q. We will tell you about it later.

MR. MATTHEWS: That is all.

RE-DIRECT EXAMINATION.

By MR. FRAZER:

Q. Just a minute. Now, Mr. Macri, referring to the Home Products Corporation incident concerning which Mr. Matthews has been asking you, will you state exactly what happened there on that occasion, as to the owners, the bosses, your negotiations and——

THE COURT: You have got the wrong company, I think.

MR. FRAZER: Is it?

MR. MATTHEWS: The Standard Cap and Seal is the sit-down strike company.

MR. FRAZER: That is right, the Standard Cap and Seal. I beg your pardon. The Standard Cap and Seal.

A. At the Standard Cap and Seal we had gotten a letter that these workers were to be organized and I went and made the contact at the plant and talked to a couple of workers and asked about their conditions. I told them to come up and see me at my office, which I had just opened up at 216 Academy Street in Jersey City. So that night they came and we discussed their problems and they went out and started to sign up the workers——

MR. MATTHEWS: I object to what they did: he doesn't know. It is only what they told him.

A. (Continuing.) And on October the 28th, as I have testified, we finally had the greater majority of the workers——

MR. MATTHEWS: Now, I object, if your Honor please: this is all a repetition.

MR. FRAZER: It is a fact: it is merely leading up to——

MR. MATTHEWS: I haven't objected to repetition. I thought you wanted to hurry for the Mayor. You will excuse me.

Q. Go ahead, Mr. Macri.

A. We had the majority of the workers under the Wagner Act for Collective Bargaining and I notified Mr. Hilsdon that we had arranged for a conference just a few days prior to that, and the date of October 28th was set and we had

negotiated wages, hour and working condition and seniority rights and many other concessions that we had gotten for the workers, such as time and a half and ten cents an hour increase for each and every worker in the plant. The president, Mr. Williams, Jarvis Williams, had agreed to recognize the United Hood and Seal Workers as the sole and exclusive bargaining agency for all the employees of that plant and also to sign an agreement and I was to draw the——

MR. MATTHEWS: When was this, please? We have to have the date.

THE WITNESS: What is that?

MR. MATTHEWS: When was this, when he had agreed to recognize the United Hood and Seal and sign an agreement?

THE WITNESS: It was some time in the early part of November.

MR. MATTHEWS: Thank you.

A. (Continuing.) And when I had drawn up the agreement I presented it to Mr. Williams for signature, for him to read it over, and if there was any wording that we had to agree upon either strike out or enter some other to be satisfactory to both parties, the union and as well as to the management. Mr. Jarvis Williams then didn't want to sign an agreement for some reason or other.

MR. MATTHEWS: When was that, please?

THE WITNESS: What is that?

MR. MATTHEWS: When was that, please?

THE WITNESS: That was some time in November or the latter part of November or the early part of December.

A. (Continuing.) Finally we had a number of negotiations and conferences. We agreed to everything as I have

stated, with the exception of the company,—the management didn't want to sign an agreement. Then when we had the last conference and still the management didn't want to sign the agreement——

MR. MATTHEWS: And when was that, please, that last conference?

THE WITNESS: The last conference, I do not have the date here with me.

MR. MATTHEWS: My gracious, you had a list of dates yesterday.

THE WITNESS: Yes, I did, but I didn't have that.

MR. MATTHEWS: Was it December 15th?

THE WITNESS: If you want that I can give it to you.

MR. MATTHEWS: Maybe I could prompt your memory; was it December 15th? I have it myself.

THE WITNESS: No, December 14th was the date that we had signed the agreement.

MR. MATTHEWS: It was prior to the 14th?

THE WITNESS: That's right.

A. (Continuing.) And the workers were always after me when the company was going to sign the agreement. I said the company will sign the agreement the day indicated. "We will need a few more conferences and I believe that they will reach an agreement that will be satisfactory to the union and the members and the management." Finally the management still insisted that they wanted to post a notice as to what we had agreed verbally and they didn't want to sign a contract. On one morning the early part of December I got a call at my office at 10 o'clock that the president of the local, a fellow by the name of Frank Bennett, called me up and said that the workers have went on a strike and I told him over the phone that he couldn't do that, that he

couldn't go out on a strike because after all we are negotiating and we didn't want no strike of any sort, and I said, "Put Mr. Hilsdon on," the manager, and Mr. Hilsdon talked to me. He said, "What is it all about?" I said, "I don't know. What's the trouble there?" And he told me that the workers stopped working and I said, "They can't stop working because after all we are negotiating an agreement and they have got to go back to work," and I would be down there immediately.

MR. MATTHEWS: What date was that?

THE WITNESS: That I would have to—it was in the early part of December.

MR. MATTHEWS: Wasn't it December 14th?

THE WITNESS: No, no.

MR. MATTHEWS: All right.

A. (Continuing.) So I got in my machine and went down to the plant and it took me probably anywhere from thirty minutes to forty-five minutes. I got to the plant, and when I got there I saw a detective, which I believe his name was Deputy Chief Wilson, and I talked to Mr. Hilsdon what it was all about. Mr. Hilsdon says he don't know what it is all about and I said, "All right, let me talk to these workers, they have got to return back to work." So I went in, Mr. Hilsdon took me in to the workers where they were huddled around talking the thing over, and I told these workers that they have got to go back to work, that we couldn't have any strike under no conditions because we are in the midst of negotiations, and we are ready to sign the agreement, and I am sure that Mr. Williams would sign the agreement. Well, the workers said, "No, we want an agreement signed," and I said, "You have got to go back to work," and they wouldn't go back to work, and I called up Mr. Williams and told him that we should get together in order to straighten this matter out. Finally I stayed

there negotiating over the phone all day with Mr. Jarvis Williams. He had made other proposal over the phone and I had given proposal and of course it was just a collective bargaining matter over the phone. So finally we expected to settle the thing the next morning into the conference.

MR. MATTHEWS: What day was that?

THE WITNESS: That was in the early part of December.

Q. Now, did you have any conversation with Mr. Jarvis Williams in relation to the remaining in of the workers in the shop?

A. Mr. Hilsdon, just before I got down, and I said to Mr. Hilsdon at that time, I said, "Mr. Hilsdon, these workers want a signed agreement. You can see that for yourself." I said, "After all I have told these workers they have got to go back to work. Since they are not going to listen to me they demand that they have an agreement, that they are not going to go by an oral agreement or a verbal agreement, that they want it in writing," and I told Mr. Hilsdon that these workers would probably remain there, and he agreed saying that it is O. K. that the workers could stay there and in the morning the thing would be settled.

Q. What happened after that arrangement had been made with the management?

A. After that I left the plant at 8:30 and I came to the hotel. No sooner I got to the hotel the girl said, "You are wanted on the phone." I went in the booth and Mr. Bennett called me up and said, "Two busloads of officers came in and kicked us out, told us we got to get out of here and said for a committee of them to come down and see them at their office" and I said that I would be over there in the morning, for them to meet at our headquarters in the morning.

Q. Did you talk to Williams later about it?

A. I have had conference later.

Q. Did you sign the agreement?

A. We finally reached an agreement.

Q. And have you had any trouble there since that time?

A. No trouble.

Q. Did he say who called in the police?

MR. MATTHEWS: I object, that is hearsay. Williams is available.

MR. FRAZER: This is the whole story.

THE COURT: I sustain the objection.

MR. MATTHEWS: The whole story cannot come in that way.

THE COURT: What is Mr. Williams' first name?

THE WITNESS: Jarvis Williams.

MR. FRAZER: Cross-examine.

RE-CROSS-EXAMINATION.

By MR. MATTHEWS:

Q. Now, just one or two questions. You said just a moment ago that you told Mr. Hilsdon these workers would probably remain there. You meant overnight; didn't you, they were going to remain there?

A. I said——

Q. Now, answer my question, please.

A. Yes, they said they were going to remain.

Q. They were going to remain there, going to sit down there until they got their agreement, isn't that correct?

Q. What was that question?

Q. They were going to sit down there until they got their agreement? Isn't that correct?

A. That because of the fact——

Q. No, sir; isn't that what they were going to do?

MR. FRAZER: How does he know?

A. How do I know what they were going to do?

Q. So you don't know. When you told Mr. Hilsdon those workers will probably remain there, what did you mean?

A. I meant that they probably would remain there because I was going to leave at 8:30.

Q. You did leave at 8:30?

A. I did.

Q. And they did remain there?

A. Probably they did remain there.

Q. Because you got a telephone from Bennett after you got to Newark that the police had put them out?

A. That's right.

Q. That is all.

MR. FRAZER: That is all, Mr. Macri.

MR. ERNST: Mr. Chasan.

RAYMOND CHASAN, called and sworn on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. ERNST:

Q. Your address, Mr. Chasan?

A. 52 Broadman Parkway, Jersey City.

Q. Your profession?

A. I am a lawyer.

Q. A member of what bar?

A. The bar of New Jersey.

Q. And you live in New Jersey now?

A. That was my residence that I gave you.

Q. And your office address?

A. The Labor Building, 26 Journal Square, Jersey City.

Q. And you are a member of various lawyers' organizations?

A. I am, sir: I am a member of the Hudson County Bar Association and also of the Hudson County Chapter of the National Lawyers Guild.

Q. Now, will you state your relations with the National Lawyers Guild, Hudson County Chapter, in respect to obtaining halls in Jersey City.

MR. MATTHEWS: I object as irrelevant to this issue.

THE COURT: How is that relevant?

MR. ERNST: Your Honor please——

THE COURT: They are not plaintiffs, are they?

MR. ERNST: I will prepare for it.

Q. Did you hear the mayor of the City of Jersey City make a statement in regard to the National Lawyers Guild?

MR. MATTHEWS: I object, if your Honor please, immaterial and irrelevant to this issue.

THE COURT: Is he a plaintiff?

MR. MATTHEWS: The mayor will be here.

MR. ERNST: Your Honor please, this is going to be evidence of direct intimidation of the lips of Frank Hague himself. We will prove that this man, connected with the Lawyers Guild, heard the mayor threaten the Guild, and as a result of that threat we will prove that the Guild was unable to get a meeting place in Jersey City. What more direct, what better intimidation can we get?

THE COURT: They don't seem to be a plaintiff though.

MR. ERNST: No, but your Honor, please, the purpose of their meeting was for the same purpose as the meetings of which testimony has been allowed in: for example, Workers Defense, Mr. Tolman, Mr. Thomas, the Whig Cliosophic Society, testimony was allowed in where Borah was not allowed to speak under their auspices.

MR. MATTHEWS: Now, I object to that.

MR. ERNST: Just let me finish a moment.

MR. MATTHEWS: I want to object and ask the Court to allow me to interrupt this man because he is just

talking for the newspapers, that's all. His headlines last night were "Egan charged with so and so." We are subpœnaing some of the newspapers for you.

Mr. Ernst: If your Honor please, the objection was made to the Egan testimony, not by us, but by this gentleman. Let me get it in. Will you open the door for it?

Mr. Matthews: I would like to open the door for you, but it isn't on testimony.

Mr. Ernst: Your Honor please, I want to proceed with the examination.

Q. Did you hear the mayor of Jersey City——

Mr. Matthews: I object to it as not relevant to this issue.

Mr. Ernst: Let me finish my question.

Mr. Matthews: You have already asked one; that has not been ruled on.

Mr. Ernst: I withdraw all questions so that you can follow me simply.

Mr. Matthews: Follow you simply is good: I simply follow you.

Mr. Ernst: Finished?

Mr. Matthews: Will be shortly if you do.

The Court: Do I understand from this witness that you asked for a permit?

Mr. Ernst: No.

The Witness: No, your Honor, we——

Mr. Matthews: No, I object to any statement from the witness.

The Witness: May I address the Court, Mr. Matthews, with your permission?

MR. MATTHEWS: Off the record, your Honor please, may the address be off the record?

MR. ERNST: Your Honor please, I would like to ask a question unless your Honor objects.

THE COURT: The Cliosophic and the others asked Commissioner Casey for a permit. Now, did this man ask Commissioner Casey for a permit?

MR. ERNST: No, this goes to intimidation which prevented the use of halls.

MR. MATTHEWS: I object to that. It might be rebuttal, I doubt even that; but it certainly isn't direct.

THE COURT: Did you ask for a hall?

THE WITNESS: Yes, your Honor, we applied for various halls.

MR. MATTHEWS: May I respectfully object and ask an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

THE WITNESS: We applied to various halls in order to engage facilities for a meeting of the National Lawyers Guild. Some of the halls we applied to we had previously had meetings.

Q. And there were conversations with hall owners.

MR. MATTHEWS: I object, if your Honor please.

MR. ERNST: Just that there were conversations.

MR. MATTHEWS: I object to it, all of this testimony is irrelevant to this issue; they are not parties plaintiff.

THE COURT: You see, Mr. Ernst, the other hall testimony was on behalf of the American Civil Liberties Union, as I remember it, and the CIO who were parties plaintiff.

Q. The purpose of the meeting, Mr. Chasan, was to be what?

MR. MATTHEWS: Now, I object to the testimony, if your Honor please.

MR. ERNST: Take your objection and let us go on.

THE COURT: Was the purpose stated to the hall owners?

THE WITNESS: The purpose was stated as——

MR. MATTHEWS: I object to the purpose. The Court asked you was the purpose stated.

THE WITNESS: The purpose was stated, yes, your Honor.

Q. Did the purpose relate——

MR. MATTHEWS: Just a minute.

Q. —to the deprivation of civil liberties?

MR. MATTHEWS: I object, your Honor please, to that question.

MR. ERNST: Let him state his objection and let us have a ruling.

MR. MATTHEWS: I object to that question.

MR. ERNST: Your Honor, let us have a ruling.

MR. MATTHEWS: After all, this is New Jersey, and it is the Federal Court, your Honor please.

MR. ERNST: In spite of the fact that it is New Jersey.

MR. MATTHEWS: In spite of the fact that you are here and if your Honor please, I think it is highly irrelevant and immaterial to this issue; I think it is really an injustice to these defendants to have the testimony.

THE COURT: I think, Mr. Ernst, you will have to add this Lawyers Guild as a party plaintiff in order that they might testify as to private halls, if that is the testimony.

MR. ERNST: If your Honor please, will you allow me to argue to that for a moment?

THE COURT: Certainly.

MR. ERNST: Without interruption by Sir John, just a minute? I won't be three minutes.

This testimony is clearly material if, as we believe, it will show that this applicant, a member of the bar, in behalf of a lawyers' association, was unable to hire a hall in Jersey City, following the statements of Frank Hague——

MR. MATTHEWS: Now, I object to that, if your Honor please.

MR. ERNST: Without——

MR. MATTHEWS: You see, this is stuff for the newspapers. Won't the Court please stop this talk for the newspapers?

MR. ERNST: If your Honor please——

MR. MATTHEWS: That's all it is.

MR. ERNST: I am arguing as to the materiality of the evidence.

MR. MATTHEWS: This, if your Honor please, doesn't——

MR. ERNST: Your Honor, will you exclude the press and let me go on with my argument, if that is what the gentleman wants?

MR. MATTHEWS: Oh, that's a play-up entirely. I object to you making that statement.

MR. ERNST: I am going to continue my argument in answer to the objection.

MR. MATTHEWS: I object, if your Honor please, to his making those statements for the record.

And, if your Honor please——

MR. MATTHEWS: Judge Clark, may I now state on this record, and I won't say any more, there is an objection to this man's being put on as a witness because his organization is not a party-plaintiff. Now this gentleman, who represents the parties-plaintiffs, is trying to enter on the record in this case, solely for the sake of publicity, extraneous matters, and to get the testimony in in that fashion. Won't your Honor, in decent respect of the rights of these defendants, forbid it?

MR. ERNST: Well, they have to be a party-plaintiff, Mr. Ernst. I will sustain the objection.

MR. ERNST: If your Honor please, will you hear me on the argument?

THE COURT: I will be glad to hear you, but——

MR. ERNST: What——

MR. MATTHEWS: There it will go again.

MR. ERNST: If your Honor please, I will be very short and specific, if not interrupted.

The reason why this is material, even though they are not parties-plaintiffs, is the following, and we are willing to show everything that we intend to do in this situation.

MR. MATTHEWS: I object to it, if your Honor please. He is only going to repeat.

MR. ERNST: I can argue a point——

MR. MATTHEWS: He is only going to repeat.

MR. ERNST: Since when is a lawyer not allowed to argue an objection?

MR. MATTHEWS: When a lawyer is not arguing an objection; when a lawyer is making a speech. That's when. And I object to a speech.

MR. ERNST: I will give you the facts that we will prove.

MR. MATTHEWS: I object to the offer, if your Honor please, because your Honor said they are not a party-plaintiff, and that's the right answer; that's the legal answer.

MR. ERNST: If your Honor please, a party, not a party-plaintiff, inquiring as to the possibility of getting a hall, after the mayor has threatened the applicant——

MR. MATTHEWS: I object, if your Honor please. There goes the statement again, solely for the newspapers. Hague will be on that stand; you ask him.

MR. ERNST: We are going to tie this up with Mr. Hague.

MR. MATTHEWS: I object, your Honor, and ask that it be stricken out, that remark.

MR. ERNST: If your Honor please——

MR. MATTHEWS: You are going to tie yourself up before you are through here.

MR. ERNST: If your Honor please——

THE COURT: Allow him to finish.

MR. ERNST: Let's be calm, no apoplexy.

MR. MATTHEWS: No apoplexy! Say, my dear fellow, my blood pressure is so normal that when I look at you it becomes sub-normal. Go ahead.

MR. ERNST: If your Honor please, the hall owners' testimony will tie up, and we are going to get them here——

MR. MATTHEWS: I object to their testimony.

MR. ERNST: To the other——

MR. MATTHEWS: Please.

MR. ERNST: —to the other side of the conversation, whereby the hall owners said——

MR. MATTHEWS: I object to what the hall owner said.

MR. ERNST: We are showing you how this will be material.

MR. MATTHEWS: I object, if your Honor pleases. I object. These tactics I have read of, but never have experienced before in the trial of a cause.

MR. ERNST: It is about time you learned——

MR. MATTHEWS: It apparently is foreign to this jurisdiction.

MR. ERNST: If your Honor please——

THE COURT: I think they should be a party-plaintiff, Mr. Ernst. You may amend the complaint——

MR. ERNST: Your Honor, I would like very much to have the opportunity to argue, because I know I am right, as a matter of law, assuming——

MR. MATTHEWS: I object, if your Honor please.

MR. ERNST: Anybody——

MR. MATTHEWS: I object to these statements. It is only another way. This fellow's unbridled effrontery is such that one would never thing him a professional man in this argument.

MR. FRAZER: May I protest, sir, against Sir John's continuance of that kind of talk?

MR. MATTHEWS: This is an infringement upon the rights of these defendants, and I repeat one would never think him a professional man——

MR. ERNST: I don't object to his remarks on that score.

THE COURT: I wish you would avoid personalities.

MR. ERNST: No, you can't stop him.

MR. MATTHEWS: He is continually repeating to this Court what he is going to do about Mayor Hague, your Honor, I await with a great deal of pleasure what he is going to do about him and with him. We will have it this afternoon.

MR. ERNST: Now, if your Honor please——

MR. MATTHEWS: I object. Won't your Honor in fairness to these defendants, if he desires to make an argument to you about this matter, hear him at recess? Because he now is making an argument not for your Honor, but is making a statement for the press.

MR. ERNST: Your Honor, until my argument has been heard this man can't tell for what purpose it is.

And let me give you a hypothetical case on the rules of evidence.

MR. MATTHEWS: I object, if your Honor please.

MR. ERNST: Assuming—assuming that any resident of Jersey City tried to get a hall and was told by the hall owner that the reason for the denial related to the case—follow me, your Honor—we are entitled to bring in the hall owner as to the hall owner's conversation and the hall owner's statements as to why the denial. Now, assuming that the hall owner said that the reason was because some of the parties defendants would do so and so to the hall, if it were allowed surely the other side of the medallion, the statements of this witness to the hall owner, must also come into evidence. It is just a question of when.

THE COURT: The difficulty seems to me, though, to my mind, that this person, this organization, rather,

is not a party plaintiff and is not entitled to any relief under the bill.

MR. ERNST: If your Honor please, it isn't for the purpose of relief. It is for the purpose of proving intimidation of those persons who wanted to discuss——

MR. MATTHEWS: I object to those statements, to prove intimidation.

MR. ERNST: —who wanted to discuss the relations. The purpose of the Lawyers Guild was to discuss civil liberties, the same as Borah.

MR. MATTHEWS: I object, if your Honor please.

MR. ERNST: You allowed the Borah testimony in.

THE COURT: That was for a public meeting. It seems to me there is a distinction.

MR. ERNST: The only distinction, as I see it, your Honor, is that in one case we went right for the permit and in this case we have to go through, and we can go through with our evidence, the material as to intimidation, by the defendants or the hall owners.

MR. MATTHEWS: I object to all this.

THE COURT: Well, you can make a motion to add these people as parties-plaintiffs, and we will argue that later on.

MR. ERNST: All right.

THE COURT: We will adjourn now until two o'clock.

(Noon recess.)

AFTERNOON SESSION.

THE COURT: Go ahead.

MR. ERNST: If your Honor please, I would merely like to have noted on the record an exception to the

exclusion of the testimony of Benjamin Freedman and Raymond Chasan.

THE COURT: I thought I had already given you one, Mr. Ernst.

MR. ERNST: I didn't know whether it was on the record.

THE COURT: If not, it is granted.

MR. ERNST: Thank you.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

MR. FRAZER: Mayor Hague, will you take the stand?

FRANK HAGUE, called and sworn as a witness on behalf of the plaintiffs, testified as follows:

DIRECT EXAMINATION.

By MR. FRAZER:

Q. Mayor, you are Mayor of the City of Jersey City?

A. I am.

Q. And how long have you occupied that office?

A. I beg pardon?

Q. How long have you occupied that office?

A. This term that I complete now will be twenty-four years. I was four years Director of Public Safety.

Q. You have been a member of the city government of Jersey City ever since the adoption of commission government?

A. I have.

Q. And that was in 1913, am I right?

A. '13.

Q. Prior to that did you hold public office?

A. Yes, I was a member of the Street and Water Board in Jersey City, an elective office, for three years, close to

three years, prior to the adoption of commission government.

Q. The city is still governed under the so-called Walsh Act, that is right?

A. Yes, sir.

Q. And that act provides for five commissioners among whom the various departments of the city are divided?

A. It does.

Q. And what department do you preside over as mayor?

A. The Department of Public Affairs, that is, the Medical Center, the Health Department, Building Department, and the Health Department,

Q. You have, however, as mayor general supervisory power over the other departments, have you not?

A. I have.

Q. And do you exercise that power?

A. I do. I exercise it when necessary.

Q. And are the policies of the other departments your policies?

A. What did you say?

Q. I say are the policies of the other departments your policies?

A. Oh, yes, yes, I would say yes.

Q. You are also the leader of the Hudson County democracy, are you not?

A. Well, that is the—yes.

Q. And of the democracy of the State of New Jersey?

A. Well, I don't know, I sometimes think I am.

Q. And you are——

A. I am looked upon as the leader.

Q. Yes, I think it is generally conceded that you are.

MR. MATTHEWS: Now, if your Honor please, of course that statement——

THE COURT: I don't see how the political questions are relevant. How are they relevant?

MR. FRAZER: Well, the whole matter of power is associated, it is a political office he is holding, and his power is based not only upon election to office but also upon his connection with the Democratic organization.

THE COURT: I don't see how his power can be increased by some political connection one way or another. The power must come from the office, not from the political party that elected the person to the office.

MR. FRAZER: I didn't quite hear that.

THE COURT: I say the power must come from the office, not from the political party, whatever it may be, that elected the person to office.

MR. FRAZER: That is a happy theory, sir; I don't think it is usually the practice.

Q. You are vice-chairman of the National Democratic Organization?

MR. MATTHEWS: I object to that as immaterial.

THE COURT: Sustained.

MR. FRAZER: Exception.

(Which exception is hereby allowed and sealed accordingly.)

(Sealed)

Q. Now, Mayor, on the ninth of December, 1937, you had occasion to go to New York in the Supreme Court Building there for certain testimony?

A. To go to the Supreme Court Building, where?

Q. In New York City.

A. Testify where? Before whom?

Q. Before a commission that was sitting there?

A. (No answer.)

MR. MATTHEWS: If you recall it is all——

MR. FRAZER: That is what I am asking.

Q. A meeting presided over by Senator John J. McNaboe.

A. Oh, on the juvenile delinquency? Or are you referring to the Senate Committee from Washington about the campaign contributions?

Q. No, I am referring to a meeting held in the Supreme Court Building in New York where Senator John J. McNaboe was sitting with a joint legislative committee on the administration and enforcement of law?

A. I was there.

Q. Yes.

A. I testified there.

Q. That is what I thought.

A. That is, I made a statement. There was no oath. It was just endeavoring to ascertain some information concerning juvenile delinquency.

Q. Did you refer there to an ordinance of Jersey City in relation to distribution of circulars?

A. No, I don't see how I could. It had no concern before that committee.

Q. Did you see any report of your appearance at that meeting in the papers?

A. Well it depends upon what you refer to as reports.

Q. I mean——

A. Was that the report of the committee or report of the press?

Q. No, the press report.

A. The press?

Q. Yes.

A. Oh.

THE COURT: You have a clipping there, haven't you?

MR. FRAZER: I have a clipping, yes.

THE COURT: Will you show it to Mayor Hague?

Q. I show you a clipping from the *New York Times* of December 10th and ask you whether you recall that meeting?

A. What do you refer to? Will you point it out?

Q. The meeting. I refer——

A. Was that the meeting or was that the interview with the newspaper men? Isn't that what you are referring to, the newspaper men?

Q. I understood it was at the meeting.

A. No.

Q. The report.

A. It was outside in the corridor, that you are referring to, I imagine.

Q. Well, did you either outside in the corridor or at that meeting over which Senator McNaboe presided——

A. Well, it was impossible to be at the meeting, Counselor; it had to be outside. Because it was no concern of the Senator's as to anything about the distribution of circulars.

Q. So that your recollection is that it was outside, at which the conversation——

A. Yes; anything concerning the distribution of circulars was outside, yes.

Q. Well, do you remember on that occasion stating that there was such an ordinance in Jersey City and that it had been upheld by the highest courts in this state, although it had never been taken to the Court of Appeals, do you remember making such a statement?

A. Well, I don't know. That is rather difficult. If the paper states that, that I did make that statement, possibly it is true, I don't know. Of course, you cannot always be positive about what some of the men are writing, particularly in this controversy. There has been quite a change come over the Guild since this controversy has taken place.

Q. Now, did you at that time state that that ordinance was constitutional?

MR. MATTHEWS: I object as immaterial, your Honor please.

A. Yes—I don't know at that time but I will say that now that I always did.

Q. And still do?

A. Assume that it was constitutional.

Q. And still do?

A. Well, not since the U. S. Court has decided against it.

Q. Since the Court in the Griffin case——

A. Yes, that wiped it out as far as we were concerned.

Q. And you now believe the ordinance to be unconstitutional?

A. On the advice of our corporation counsel, yes, sir.

Q. Do you know that subsequent to the decision in the Griffin case the police of Jersey City gathered circulars, took them from the hands of persons who were trying to distribute them?

MR. MATTHEWS: Just a minute, Mr. Mayor. I think you should have the whole story there. That was to prevent disorder, that wasn't to violate the ordinance.

MR. FRAZER: I asked him simply whether he knew that.

THE COURT: Just answer it yes or no, Mayor, if you knew it.

A. Well, it all depends, Judge, just exactly what the circumstances were. The police of Jersey City must assume that if there is disorder and there is any danger of violence or uprising and the circulars are a circular that would offend the people of Jersey City, why, of course, naturally they would feel it was their duty to remove the circulars.

Q. I show you Exhibit P-32 and ask you whether you think such a circular is one which should be, for the reasons which you say, prevented from being distributed?

A. No, I wouldn't say there was any objections to that.

Q. Or——

A. Why should there be an objection where the President is involved?

Q. Or P-7, Exhibit P-7?

A. Well, I would say there is an objection to that: that is not a proper circular to distribute amongst a community that is law-abiding; that is a religious circular.

Q. You think a religious circular should not be distributed?

A. No, I do not. I think they ought to keep out.

Q. And if they are——

A. They shouldn't come in there with any purpose of aggravating and disturbing the peace and quietness of the city. What right did that circular have in Jersey City?

Q. I am not on the stand, sir.

THE COURT: What is that one?

MR. FRAZER: This is the one which was——

MR. MATTHEWS: The hanging of Thomas Campbell with a legend on it that is entirely contrary to historical fact.

MR. FRAZER: Exhibit P-7, which it was testified to was taken away from the distributors by the Jersey City police.

Q. You think that was proper then, do you, Mayor?

A. It depends entirely on what the circumstances was. If there was objections by the people receiving those circulars, yes; if there was no objections, and there was no disorder, it makes no difference.

Q. I show you Exhibit P-1 and ask you if you think that that is objectionable.

A. I don't see any objections to that. As I say, it depends entirely upon circumstances. You must remember there was quite a little disorder there of people resenting these men who were distributing these circulars, and women on forcing them in their hands and in their pockets and upon their person, and there was numerous complaints about the conduct of those people.

Q. Did you ever see that done?

A. No, only just what the police and the comment in the public press from time to time the reports of these co-

currences that took place there; that is how I familiarized myself. I don't endeavor to try to ascertain an official report on everything that goes on.

Q. Are there any official reports bearing upon this subject?

A. No, sir, there is no need of one.

Q. You do know that a number of these takings up of circulars took place subsequent to the decision in the so-called Griffin case?

Mr. Matthews: Now, if your Honor please——

A. I am not familiar with that. I cannot answer it.

Mr. Matthews: If your Honor please——

Mr. Frazer: He says he cannot answer it; there is no particular reason for another speech.

Now, in this same report, newspaper story, from which I have been reading, it states that at the Legislative Committee on Law Enforcement in the Supreme Court you were asked whether efforts of the CIO to organize Jersey City workers would constitute an attempted invasion. Do you remember that?

A. No, sir.

Q. You do not.

The Court: That's the same one, isn't it, the same article?

Mr. Frazer: The same what?

The Court: The same article we had before?

Mr. Frazer: Yes, sir, the same article.

The Court: Which you showed to the witness.

Mr. Frazer: At least I think it is.

Q. Well, you have stated about invasions, haven't you, Jersey City by the——

A. Oh, frequently; made public utterances, made public statements frequently.

Q. Yes. And what in your opinion constitutes an invasion?

A. Of course, you must remember, so that we will get the matter very clear, your Honor, I have been associated with labor for a great number of years——

Q. Now, I am asking you a definite——.

A. Well, now, just a minute, just a minute. You asked for my explanation. You must accept it. I mustn't have any interruptions.

MR. FRAZER: I submit that I am entitled to a responsive reply, sir.

THE COURT: You have a party to the cause on the stand now. I think he should be allowed to answer.

THE WITNESS: Judge, I can't answer the question to please the counsel. I must answer the question to please the witness.

MR. FRAZER: No.

THE WITNESS: I can't be permitted to commit myself to a question yes or no, that requires a statement. He asked——

THE COURT: I will allow him to answer; I will allow him to answer.

MR. FRAZER: I don't conceive that the Mayor's idea that the testimony he is to give is to be pleasing to me is the proper definition of testimony. I want to elicit certain facts. I only want facts. But what facts I wish to elicit are mine, not the Mayor's.

THE WITNESS: In asking me the questions you must accept them as I give them.

MR. FRAZER: If they are being elicited by me I agree, but otherwise I would suggest to the Court——

THE WITNESS: Your question to me—will you repeat the question?

THE COURT: The question was in very general terms.

THE WITNESS: Very general.

THE COURT: As to what an invasion constitutes.

MR. FRAZER: Very general; what constitutes an invasion?

THE WITNESS: Yes, but I must be permitted to answer that question.

MR. MATTHEWS: The Court allowed it, Mayor. Go ahead.

A. I have had a great number of years of experience with labor, and in over twenty-five years I have never had any disputes with the American Federation of Labor——

Q. Now——

A. Now, just a minute. We have never had any invasion from the American Federation of Labor.

MR. FRAZER: Now, may I ask the Mayor——

THE WITNESS: Just a minute.

MR. FRAZER: —to define "invasion" which he is now using again? That's what I am trying to ascertain, what he considers an invasion. Now he has just used the word which I am asking him to define.

A. I am going to explain my interpretation of invasion, but you are interrupting me.

Q. I am sorry. I don't wish to interrupt you, but I would like to have you confine yourself to the questions.

A. My interpretation of invasion is the declaration that Harry Bridges has made, the noted Communist of the country, when he ordered 500 of his strong-arm men to invade Jersey City, to destroy the civic industry of Jersey City. That's an invasion.

Q. Now——

A. And when Mr. Carney, in a public declaration, says that he is going to invade Jersey City 3000 strong, law or no law, that's an invasion. That's my interpretation of an invasion.

Q. Did Mr. Carney invade Jersey City with 3000 men?

A. No, he was afraid to.

Q. Do you know that he wanted to?

A. He desired to.

Q. And you learned that from a newspaper report?

A. Yes.

Q. Did you ever communicate in any way with Mr. Carney as to the truth of that report?

A. I had no occasion to communicate with him.

Q. So that your definition of an invasion involves a very large number of persons?

A. No: from my experience in Detroit, Ohio, and all the other cities that the CIO had any dispute or any labor controversies——

MR. FRAZER: Now, I object, if I may——

A. (Continuing.) You are asking for my interpretation of an invasion.

Q. No, I am not.

A. I say bloodshed, riot, disorder, violence, in my estimation is an invasion.

Q. How many people do you think would have to be in a group to constitute an invasion, as you call it?

A. It depends. An invasion could be of ten or more.

Q. Ten or more?

A. A thousand—go to any number.

Q. And ten or more people coming into Jersey City, for instance, to distribute circulars, would constitute an invasion in your opinion?

A. Now, don't confine it to distributing circulars. Why don't you simply say that they are armed to the teeth to destroy life and property? That's my interpretation of an invasion.

Q. Unless they are armed to the teeth——

A. There is nobody going to harm anybody with a circular in their hand.

Q. Unless they are armed to the teeth to destroy life and property, even though they come in substantial numbers, you wouldn't consider it an invasion?

A. The reputation that has preceded this element of the CIO was sufficient evidence to me that they were dangerous, and that for them to invade a city meant serious trouble.

Q. Did you consider that there was an invasion of the City of Jersey City on the morning, early morning, of November 29, 1937?

A. Yes, sir.

Q. Now, there were a number of arrests on that day, were there not, Mayor?

A. Yes, sir.

Q. Were there any arms found upon the invaders?

A. Not that I know of.

Q. Do you know how many invaders there were?

A. Well, from Mr. Carney's statement the night before, two days prior, there were to be three thousand.

Q. Do you know how many there were?

A. A hundred or two hundred. It didn't go over the two hundred limit.

Q. How many police did you have to handle that invasion?

A. Oh, that—Commissioner Casey handled that.

Q. You don't know how many were detailed for that purpose?

A. No, I do not.

Q. As a matter of fact, no one was armed as far as you heard?

A. No, I did not hear that they were armed.

Q. And you would undoubtedly have heard if that had been the fact?

A. The papers, the newspaper men were there. They were right there. They observed everything, and if they were armed the papers would carry a complete story of it.

Q. Did you hear of their having anything but circulars that day?

A. Did I hear—what's that, Counselor?

Q. That they had anything, the so-called invaders, whether they had anything with them that day besides circulars?

A. I didn't hear that they had.

Q. You do know that a large number of them were arrested, don't you?

A. Yes. Well, a large number—there was thirteen arrested.

Q. Well, when you say arrested, you mean taken to the police station?

A. Yes.

Q. You do not consider it an arrest when a police officer puts them in a car and takes them somewhere not the police station?

A. No, I think he is doing them a favor.

Q. I see. But there were in addition to those whom you say were arrested a substantial number who were transported by force of the police department to places where they themselves had expressed no desire to go, is that right?

A. That's the paper account.

Q. Well, don't you know as a matter of fact whether it was or not true?

A. It was true.

Q. It was true. Now, some of those were taken in cars and some of them were forced on ferryboats and tube trains, that is true, isn't it?

A. Well, that I am not familiar with, Counselor, the papers carried that story; that's the only official notice I have on that.

Q. Do you consider it neighborly to take the undesirable persons from Jersey City and dump them into another community?

A. Do I what?

Q. Think it is neighborly?

A. To dump them into another city?

Q. To dump into another city se whom you don't want in Jersey City?

A. If they come from that other city and they are dumped back I think that is neighborly.

Q. Assume they did not come from the other city but lived in Jersey City?

A. Well, of course, Counselor, you cannot have the police examine on the premises and ascertain individually where they come from; if they appear and there is disorder and there is danger of riots, of course the police must use discretion and get rid of them as best they can.

Q. Do you know Mr. Carrick, a young lawyer, Judge Carrick's son?

A. No, I have never met him. I heard of him. I knew his father very well.

Q. You know that he lives on Gifford Avenue in Jersey City?

A. The family lives there, yes, sir.

Q. Do you think it was proper for your police to take young Mr. Carrick and force him to go on a ferryboat to New York when he said he lived in Jersey City?

A. Was he there that morning?

Q. He wasn't there that morning.

A. I don't think he was there that morning.

Q. No, he was there on another occasion in Journal Square. On April 30th Mr. Norman Thomas came to Jersey City. Do you recall that occasion?

A. Yes, sir.

Q. Mr. Carrick has testified here that on that evening he was at Journal Square observing; that your officers took him in an automobile and took him down to the Communipaw Ferry.

A. Took who?

Q. Mr. Carrick.

A. No, no, no, you are in error on that.

Q. Mr. Carrick so testified.

A. Well, then, I think he has testified falsely, if he has it was Norman Thomas was taken there.

Q. But he also——

A. He wasn't with him.

Q. No, he was not with him.

A. There was nobody with him.

Q. He was simply there, Mr. Carrick was merely there——

A. He was at the Square but he wasn't in the automobile and he wasn't transferred to the Central ferry; you are in error, Counsellor, on that.

Q. Well, I think, Mayor, you possibly are. I am merely telling you what Mr. Carrick testified here under oath.

A. Well, I never knew that.

Q. He didn't testify that he was in the automobile with Mr. Thomas, he did not testify to that; he testified though that he was on Journal Square, he was picked up by police officers and put in an automobile and despite his protests that he lived in Jersey City was taken to the Communipaw Ferry of the Central Railroad and there forced upon the boat and kept under observation until the boat left.

A. I don't——

Q. Do you think that is proper conduct on the part of your police officers?

A. I don't think it happened. I know very well it did not happen.

Q. Assuming that it did happen?

A. Well, assuming; why do you assume that anything like that happened? Don't be asking me those questions. Why do you pick out a citizen such as Mr. Carrick is and single him out? Just because he is a resident——

THE COURT: Here is his testimony.

Q. I single him out, sir, because your officers, according to his testimony, singled him out.

A. The only time I ever remember reading—I didn't get any official report, Counselor, was there was a picture

of Mr. Carrick in the Jersey City *Journal* and the Jersey *Observer* and he said that he got hit in the eye and I think he stated then that an officer hit him the eye and I think he was asked who was the officer and did not know. That's the only time I recall Mr. Carrick having any controversy or any trouble.

Q. Your whole knowledge of that situation up to the present moment was gotten from the pages of the Jersey *Journal?*

A. Well, that is about this boy.

Q. Yes. Assume now that the Jersey *Journal* presumably made no report of his having been taken in the automobile——

A. No, it did not.

Q. So that you may be learning of it for the first time right now, and probably are.

A. I don't see any occasion for it, Counselor; I don't see why they would do that.

Q. That is what we are curious about. It happened according to Mr. Carrick's testimony.

A. Did he testify here?

THE COURT: Yes. He testified in this way: "I was held in the car at the Central Railroad of New Jersey ferry slip until a ferry was about ready to leave. While I was waiting for the ferry two other cars bearing other people came down," and so on.

MR. MATTHEWS: Then the testimony is not, your Honor, that he was put on the ferry.

THE COURT: "When the ferry was ready to go we were put upon the ferry and there was absolutely no way that we could avoid going on the ferry." Page 401 of the record.

Q. Why do you think your police did that to him?

A. Well, I don't know; I would like to know the circumstances. I don't know what the circumstances is. I cannot answer that.

Q. By the way, were you at Journal Square that night?

A. No, no, sir.

Q. In no building on the square?

A. No, sir.

Q. Mayor, what circumstances would you think would be proper ones for your police to put a resident of Jersey City, a member of the New Jersey bar, into a car and force him to go to New York?

A. Well, it depends upon his conduct entirely. I am not familiar with his conduct; I don't know just what transpired there; I don't know anything appertaining to the circumstances. I would have to know that first.

Q. There seems to be no evidence of disorderly conduct on his part, but assume that he had been disorderly that night in Journal Square, do you think your police officers would have been justified in forcing him on a ferry to New York?

A. If he was conducting himself orderly and if he wasn't interfering with the performances of the duties of police officers, they would have no right to do that, but the circumstances may be different. I don't know. You are not presenting the whole facts to me.

Q. I am presenting them as fully as I have them.

A. Well, Counselor, you are singling out a group who was born and raised in Jersey City, whose father is a very distinguished man, and you are singling him out and you are asking me now if circumstances connected with boy was normal, and he was a bystander and he wasn't associated with this radical group that was causing the disturbances, they had no right to put their hands on him, they have no right to deport him, but if the circumstances were reversed and he was disorderly and he was conducting himself other than a gentleman and was creating disorder [illegible] there, then that is a different picture.

Q. Well, now, assuming that he was doing all of the things that you have just said and was associated with the radical group that you speak of but was still a resident of

ing on Gifford Avenue, Jersey City, do you think that your police had a right to take him and put him on a ferry boat and ship him to New York?

A. They do not know that he was a resident of Jersey City. They did not know the boy.

Q. He so informed them, he stated.

A. Oh, well, I doubt that. You see, Counselor, there may be circumstances surrounding this man that there may have been disorder, there may have been blows struck; the boy may have been in danger; there may have been trouble there. I am not familiar with what transpired. The police ought to explain that, if they can.

Q. Well, now, do you think that they had a right to run him out anyhow if he had been a non-resident of Jersey City?

A. Counselor, it depends entirely on circumstances. If your life was in danger, if you were in the center of the commotion and things looked bad and you were charged with saying things that I did not hear and your life was in danger, yes, I think it is smart to take it [illegible] danger zone and relieve him of any violence [illegible] treatment.

Q. You think that is within the powers of the police and the right of the police?

A. Well, I think it is discretionary in a great many cases they should use their own discretion. Police as a rule, there are very considerate and very patient in their duty.

Q. Do you remember the occasion of that visit to New York on December the 9th when you [illegible] Senator McNabb when you were asked who [illegible] whether there was an attempted invasion or not, do you remember what you replied?

A. I remember what the publication said.

Q. What did they say you replied?

A. There was a hostile group of reporters there, and they inspired me, and they started to talk about the [illegible] and I had to break away from them and get into the court

room. You see the picture they published about me, you?

Q. Is that the picture?

A. So anything they reported in the [illegible] surely wasn't in the nature of [illegible] thank this gentleman sitting there, Mr. Ernst, for

Q. So that anything that was said you deny they said anything true about you?

A. Well, some was true, but anything

Q. Well, did you——

A. I am telling you the truth here. That's the entire newspaper profession.

Q. Does that go for the New York Times people on the Guild?

A. Depends on who writes it. If it's [illegible] cause he's a member of the Guild or not, I've proven that he's a member [illegible] and all wrong.

Q. Now, I want you on that account, in order to [illegible] Was [illegible] or not? did you say, I deny, I deny——

A. No, I don't remember that.

Q. And [illegible] said, Mr. Hague, [illegible] guess. Right here——

Mr. Matthews: I object to that.

A. That's out.

Mr. Matthews: That abuse of the Mayor——

A. That's the Newspaper Guild performance.

Q. I just want to ascertain what you——

Mr. Matthews: And you know it, you know it and the country knows it, just a cheap newspaper that goes for the gentleman that wrote it.

Q. Mayor, would you define Communism [illegible]

Mr. Matthews: Now, your Honor please, [illegible] want a definition of Communism as an economic [illegible]

By Mr. Frazer:

Q. All I desire to know from the witness, and I am not suggesting that he is a Communist——

The Court: No, I don't think anyone thought you were, Mr. Frazer.

Mr. Frazer: Is merely what he means when he uses the word "Communism." That's all; what he means. So that we can have a definition and know that we are talking about the same thing.

The Court: Yes. All right.

A. Well, my interpretation, Counselor, of a Communist is a man who is subject to Russia, a radical who is opposed to the American principles and American institutions whose sole purpose is to overthrow our government, whose sole purpose is against all types of religion, all types of government, only the Soviet Government in Russia.

Q. So that unless those factors are together in a particular individual's belief, you would not say that he was a Communist?

A. Well, I wouldn't say that. I would have to see first what his contacts is, and who his associates are, and how he performs. I generally—I will judge him as I find him.

Q. Now, would you think distributing circulars about joining the CIO would constitute a man a Communist?

A. No, sir.

Q. Would membership in the CIO constitute a Communist?

A. Well, now——

Q. As such, I mean.

A. Well, just a minute. Now that depends. You have got to understand, Counselor, that the heads of the CIO outside of John Lewis, are noted Communists. The records will show that. If they will appear on this stand we will prove that by actual records. We will prove that by the statement of John Lewis himself, of John Brophy. We are

going to prove—he has got a subpœna in his hand, Mr. Ernest has now—we are going to prove that he is the treasurer of the Garland fund; we are going to prove that he contributed $25,000 to the I. W. W.: we are going to prove that they supply all the funds to the active Communistic groups in this country.

Now, if that isn't exposing Mr. Ernest as a known Communist, I would like to know what is.

Q. Well, I am glad to have your conception of how one exposes Communists. So that Mr. "Ernest" is a Communist?

A. When he gets on this stand he will be confronted with and he will be made to admit it, because if he produces his records, which I doubt that he will produce, because only yesterday Mr. Dunn jumped out of a five-story window to get away from a process server, or got down some secret staircase or something——

MR. FRAZER: May I move that that be stricken out as being purely gratuitous?

THE WITNESS: Well, you are asking me about Communists.

Q. I didn't ask you anything, Mayor, about Mr. Dunn. I don't know who Mr. Dunn is.

A. I am only telling you—Mr. Dunn is the treasurer of the Defense League, one of the noted Communist groups.

Q. Do you remember writing a letter to Congressman Jerry O'Connell?

A. Remember what?

Q. Writing a letter to Congressman Jerry O'Connell about December the 7th?

A. Yes. I thought it was a pretty good letter.

Q. Well, that's what I thought you probably did think, and that is the reason it gives me pleasure to call it to your attention. You did say in that that you could assure him that everything was under control?

A. Yes, sure.

Q. Yes. And that he was to leave everything——

A. It was humorous.

MR. HERSHENSTEIN: Let him finish.

A. (Continuing.) It was humorous, I say. Jerry was writing me a letter with twenty-six Congressmen, which Mr. Ernest had signed, and going to drive us out of the country, and I thought it was opportune for me to send Jerry the letter, just to kid him, because I thought the petition was such a huge joke.

Q. Is Jerry a Communist?

A. Is what?

Q. Is he a Communist, Jerry?

A. I think he is ten Communists.

Q. He is ten, ten Communists?

A. Ten of them, not one.

Q. He is elected as a Democrat, isn't he?

A. Well, he was.

Q. Now when you assured Congressman O'Connell that he was to leave everything to you, not to worry, that meant that you yourself would be responsible for preserving the order in Jersey City?

A. Well, I said—I told you, Counselor, that that was——

Q. Just facetious?

A. (Continuing.) —a joke; that letter was just a huge joke, the same as the petition that the twenty-six Congressmen sent to me. I thought it was the biggest joke I ever read in my life.

Q. Do you think——

A. What a nerve they had, to tell me they were coming into Jersey City to tell us how to run the government of Jersey City! They ought to have stayed in Washington and tried to run it there.

Q. Now, it seemed to you to be a joke. Do you think it was sent by them with the idea of its being funny?

A. No—oh, no, no; it wasn't sent by them with the idea of being funny.

Q. No.

A. This was one of the master m ds of Mr. Ernest, to try to scare me and my colleagues.

Q. Now——

A. He had a nice time.

Q. How do you know Mr. "Ernest," as you call him, wrote this letter? You said so several times.

A. His statement——

Q. What is that?

A. He stated in the public press, and he was in Washington when it took place, he said that he prepared his petition and got these twenty-six Congressmen to sign it.

Q. That was not written by a Guild reporter, was it?

A. I don't think so.

Q. That's the source of your information, however, what you read in the paper?

A. About Mr. Ernest?

Q. Yes.

A. Yes, sir.

Q. Were the statements in the letter signed by the twenty-four Congressmen, letter dated December 1, 1937, true?

A. Was the statement?

Q. Were the facts which they set forth—were they true?

A. No, no; it was just a radical statement coming from a group of radical Congressmen. They didn't know the contents of the statement themselves. Mr. Ernest prepared it for them. They didn't know what it was.

Q. If it had been true, that there were wholesale arrests and deportations from the city limits, of organizers, both resident and non-resident, in your city, seeking to organize workers in various industries, would you have thought that that was a funny thing, or would that be worthy of serious consideration by you?

A. I wouldn't consider it funny, coming from that source, because they don't know where Jersey City is.

Q. But as a statement of fact do you think——

A. Well, they were not familiar, Counselor, they knew nothing about it.

Q. That's what they said.

A. Oh, they said——

Q. Yes.

A. (Continuing.) —it was false, they knew nothing about it.

Q. No, they said—"We have not had an opportunity to investigate the facts at first hand, but the reports concerning them appearing in our press are sufficiently disturbing to move us to ask you for your version of the situation."

Now, wasn't that a courteous——

A. Well, I gave them my version in writing, to Jerry.

Q. But you treated it as a joke, didn't you?

A. Why, certainly I treated it as a joke. So did they.

Q. Yes. Do you think that a statement that they had seen by press accounts, upon which you rely to a large extent in getting your information, do you not?

A. Yes, but I——.

MR. MATTHEWS: Just a minute, Mr. Mayor.

A. (Continuing.) I doubt that——.

MR. MATTHEWS: There is no resolution attached by the Congress in it. This is just a letter to Mayor Hague Let him look at the letter.

MR. FRAZER: He knows the letter very well. He received it. I am perfectly willing to let the mayor see it at any time.

Q. You have no objection to my using the Congressional Record for it, have you, Mayor?

A. No, no, Counselor. Perfectly all right.

MR. MATTHEWS: Let him see it.

Q. Now, as I read the letter, they frankly stated that they knew nothing about the situation except from what

they considered disturbing reports which they had read in the press. Now one of the disturbing reports, as they considered it, was as follows:

> "We refer specifically to the wholesale arrests and deportations from the city limits of organizers, both resident and non-resident, in your city, seeking to organize the workers in various industries in that region."

Do you consider such a report, had it been true, as a laughing matter?

A. Well, Counselor, now in your statement prior to that, you discussed with me—you will permit me to explain——

Q. Surely, surely.

A. You discussed with me the distribution of circulars. That's all this Carney group was doing. Now where did the Congressmen get the word of organizing industries? That was never mentioned. That comes from Mr. Ernest.

Q. Well, as a matter of fact, didn't you understand that Mr. Carney——

A. But the papers didn't carry that, Counselor.

Q. Mr. Carney and his associates were frankly CIO organizers; you understood that, Mayor, didn't you?

A. Yes, but your question to me—you simply said, "Did you think that there was any serious development that could come out of the mere fact of the distribution of circulars?"

I said, "No."

You said, "'Were they armed?"

I said, "No."

"Then you could anticipate no serious development?"

I said, "No, I could not anticipate serious development."

That was never mentioned. Mr. Ernest put that in.

Q. Well, I don't know that he did.

A. Well, it wasn't in the newspapers, Counselor.

Q. It may not have been in the newspaper which you read, Mayor——

A. Then how did the Congressmen get possession of it? You say they learned it through the public press.

Q. That's what they say; that's all I know.

A. Yes, but it never appeared in the public press.

Q. I am assuming that when they wrote you what seemed to be——

A. Counselor, Morris Ernest was in Washington; Morris Ernest publicly stated in the newspapers that he had prepared this, and he was sicking the twenty-six Congressmen after me.

Q. Well, I don't know whether that is so or not.

A. It is so.

Q. I didn't see that account, Mayor.

A. It is so.

Q. So I am not as fully advised as you are on that subject.

A. He knows it is so. So, as I say—now he made another public statement at that very time, and he said, "The reason we want to stop Hague is because he will encourage other cities to carry on in the same manner he is carrying on, and that will be disastrous to the C. I. O. throughout the country." That was his reasons for getting these twenty-six Congressmen, why they were going to come here.

Q. But what they said was not a laughing matter; what they said they heard; was it?

A. No.

Q. Or do you consider it funny?

A. (No answer.)

Q. Did you think it was funny?

A. What is that?

Q. I say did you think it funny, that statement?

A. Oh, no, no. I don't treat it as a joke. I didn't say I did.

Q. Do you remember in that letter they quoted from President Roosevelt as follows:

"I believe that Democratic government in this country can do all the things which common sense people seeing that picture as a whole have a right to expect. I believe that these things can be done under the constitution without the surrender of a single one of the civil and religious liberties it was intended to safeguard."

Do you think that is a fair statement of democracy?

A. What is that? From the President?

Q. From the President, yes.

A. Why do you bring him in here?

Q. Because he was in this letter which you thought was so funny.

A. Did he—did he dictate that——

Q. That was quoted from the President, from his Constitution Day speech, which I am sure you must have read in the press.

A. If President Roosevelt stated that, but not in that letter, yes. I have the utmost respect and the highest respect for the President. But I don't think you should bring him in here.

Q. Well, I am only bringing him in here because he is in this letter.

A. Well, I don't think he belongs in here.

Q. Which you said was funny.

Mayor, do you remember about the time in the latter part of December when certain requests were addressed to Commissioner Casey, Director Casey, for permits for open-air meetings in Journal Square?

A. Yes, sir.

Q. Do you recall that when those permits had been applied for by mail, forthwith——

A. Well, my only notification, Counselor, was through Commissioner Casey.

Q. Yes. I understand. I am just trying to get the picture in your mind of the situation there, the permits having been requested of Commissioner Casey by letters, which are in evidence.

How was it that as soon as those letters reached Commissioner Casey's hands, a number of men calling themselves veterans had a meeting and tried to get up a mass meeting immediately afterwards? Do you recall that there was such a meeting?

A. Yes, sir.

Q. How did they come to do that, do you know?

A. Well, of course, you see we have got very alert newspapermen covering the City Hall.

Q. Yes.

A. And every important communication such as that is of course at their disposal. The press carried the receipt of that communication the very day that it was received. It doesn't require a great deal for the veterans to be aroused, particularly when there is a question like this involved, and it led from there to the veterans.

Q. Did you know that I had personally directed one of those letters to Mr. Casey?

A. I recall your letter, Counselor; yes, sir.

Q. And that my reply from him was not definite until opportunity had been given to stage the veterans' meeting?

A. Well, you see, under the ordinance, Counselor, he has three days to examine into the letter as to the contents, as to the reputation of the one who desires the permit, and if you will notice it was that three-day period that caused probably some action because of the alertness, as I said, of the newspapermen in the city hall, they published it probably the same day it was received. His rule is not to answer the letter until the three-day period has expired.

Q. Do those active newspapermen belong to the Guild that got this letter?

A. I don't know; if they do they are pretty good newspapermen.

Q. You mean that if they were known to belong to the Guild they wouldn't have access to the letter?

MR. MATTHEWS: He didn't say anything of the kind.

Q. I am just asking for the information.

A. I didn't say that, that's out. I have never had any trouble with the Newspaper Guild, Counselor, until this war started; then they all seemed to want to take a kick at me.

Q. I thought I detected some kind of bitterness in your attitude.

A. Oh, no, there is no bitterness, only I am on my guard, that's all. I smile, good fellows, I don't object to them at all, only I just safeguard what I say.

Q. Now, Mayor, coming back to my letter, I sent it over on the 23d of December. I had no reply to it until a letter dated December the 27th. That was more than the three days.

A. Well——

Q. At which time it was reported that there was to be a meeting—no, at which time he said he would have to make an investigation, and that investigation apparently took him until December 30th, my letter having requested a meeting either on December 29th or December 30th; I got a reply on the 27th to my letter of the 23d in which he says he has to make an investigation, and then I received on the 31st a letter dated December the 30th that was written on the second day of my application, and it points out there that on December the 28th, that is, the day after his first reply to me, there was a meeting of the veterans. Don't you think that that reply was held pending the meeting of the veterans?

A. Well, of course, you see your letter was quite an important letter, Counselor; we naturally—when I say "we" I mean the law department and Commissioner Casey and my colleagues, anticipated that you were preparing and laying your groundwork for court proceedings, and that you were going into action, and naturally there had to be some time given to that letter. Now, as far as the veterans is concerned, they move very rapidly; they are Minute Men. So don't be surprised if you find them in action two days after the receipt, or the publication of any communication because they can muster in three or four thousand veterans in twenty-four hours.

Q. Unquestionably.

A. They work fast over there.

Q. You have no difficulty in mustering veterans when you want them for your parades, do you?

A. No, I don't.

Q. Do you think, Mayor, that you could have prevailed upon the veterans to have been a little less aggressive at this time if you had asked them?

A. I didn't hear that, Counselor.

Q. I say do you think you could have prevailed upon the veterans to have been a little less aggressive if you had asked them to do so?

A. Well, I wasn't desirous of asking them that.

Q. You wanted them to be aggressive?

A. Oh, well, you have got to remember, Counselor, we are involved, the City of Jersey City is involved in this controversy; the people are disturbed.

THE COURT: We will take a ten-minute recess.

THE COURT: Mr. Matthews, Dean Frazer, I won't sit on Monday; it is my motion day. We will meet on Tuesday at 10:30. If there are any motions going to the subpœna I suggest they be made Monday afternoon at two o'clock.

MR. MATTHEWS: Two o'clock, your Honor?

THE COURT: If there are any. I don't know that there are, but there seemed to be some talk about it.

MR. FRAZER: Two o'clock Monday afternoon for the motions?

THE COURT: Yes. Then we will get those out of the way before Tuesday.

FRANK HAGUE, resumed the stand.

DIRECT EXAMINATION (Resumed).

BY MR. FRAZER:

Q. Mayor, just before the recess you were complimentary enough to say that the authorities in Jersey City considered my letter as an important instrument. Were the various meetings that followed so hard upon the receipt of that letter a part of the manner in which Jersey City met the proposed invasion?

A. Well, did you say meetings?

Q. There was a meeting of the veterans on the 28th, as I recall it; there was some kind of a meeting of the Chamber of Commerce about that time, was there not? Do you remember the date of that?

A. No, I do not.

THE COURT: I think it is in evidence, Dean Frazer.

Q. And then there was a large meeting at the Armory, as I recall it, where you addressed the meeting with a nation-wide hook-up over WOR, is that right?

A. Yes, sir.

Q. Now, did those various meetings, all of which seemed to be for the same general purpose, constitute a part of the plan of action which the Jersey City authorities undertook in order to meet the invasion, as you have called it?

A. Well, the Jersey City authorities didn't enter into that at all, Counselor; that was the Chamber of Commerce and civic and fraternal organizations of Jersey City that sponsored that meeting.

Q. Well, did the Jersey City political organization enter into it in any way?

A. Not as a body, not as units; they probably appeared there in person.

Q. You do have ward clubs, don't you?

A. Yes, sir.

Q. Do you have a club in every one of the wards?

A. Not in every ward.

Q. But in most of them so-called Democratic clubs?

A. Yes.

Q. There is one in the Fourth Ward?

A. Fourth.

Q. Fourth Ward Democratic Club?

A. I don't think so. They have a meeting place but it is not a club, Counselor.

Q. Well, it is an organization called a club?

A. Yes.

Q. Of which Mr. John J. Coppinger is the leader?

A. That's right.

Q. Is Mr. Coppinger in the city employ?

A. Tax commissioner, former sheriff.

Q. Now tax commissioner, former sheriff, of Jersey City?

A. Yes.

Q. And there is a Seventh Ward Democratic Club, the North End?

A. Yes, that's McGurk.

Q. No, Eugene Ertle.

A. Eugene Ertle, city clerk, that's right.

Q. And there is the Eighth Ward Democratic Club, Patrick J. Donnelly is leader, is he not, a public employee?

A. Yes, he is a freeholder.

Q. Not directly connected with the city government?

A. No, the county government.

Q. Now I show you here three postal cards, all of them, you will notice, with the names erased, to whom they are addressed, and ask you whether you have seen any of these cards before.

A. No, but that is customary in any big affair or any big drive, that is customary, to follow that plan of notifying everybody to be present, particularly where the mayor of the city is interested. You see, in order to have it uniform you will note that every card is alike and then they are distributed.

Q. Do you happen to know who holds union label No. 4, what printer?

A. No.

Q. You wouldn't know who paid for these cards, would you?

A. Well, I don't know. You see in an affair of that kind it was contributions, it was subscriptions, and the Chamber of Commerce and the veterans and the different civic bodies and the different public bodies, if there is any there, would make contributions and pay for them in that manner. No one person paid for it.

Q. Now I show you—excuse me, I thought you had finished.

A. That's all right.

Q. I show you a typewritten—it looks like a carbon copy—paper dated December 28, 1937, entitled "Important Notice" and finishing with the words "Message from the Mayor's Office." Can you identify that as having been written on a machine in your office? There is a little typewriting at the top which is not part of the message; I don't want to confuse you with that.

A. Well, I don't know where that comes from, Counselor; that didn't come from my office.

Q. Did not?

A. No. That is—I can't positively say what the character of the machines are.

Q. Well, I was wondering whether you knew of such an instrument having been sent out, whether you directed such instrument to be sent out.

A. No, that came from the veterans, you can see that, and they assumed that the message come from the Mayor's office because of my activities in this movement. What they wanted to impress upon the veterans, and thousands of them is my personal friends, that I was interested and that this was approved by the mayor and my associates, which we did, we approved of everything now; we are not shirking any of that.

Q. Well, do you know whether such a message was sent to all of the city and county department heads?

A. Well, those are veterans, that isn't county and city department heads, this, I don't mean that.

Q. Well, that was my information in regard to that; I am not testifying for you.

A. You are asking me to testify to this.

Q. The top line is the information which I received concerning this and I want to ask you whether that information is correct or not.

A. I don't know, Counselor.

Q. You don't know?

A. No. The other is coming from the veterans.

MR. FRAZER: Now, I should like—I may have occasion to use this later and I would like to have it marked for identification.

(Marked Exhibit P-33 for identification.)

MR. FRAZER: And these postal cards, I should like to offer in evidence.

MR. MATTHEWS: No objection.

MR. FRAZER: Three altogether as one exhibit.

(Received and marked Exhibit P-34.)

MR. HERSHENSTEIN: Are you marking them separately?

MR. FRAZER: No, three cards as one exhibit, P-34.

Q. May I know who is Mr. Robert S. Carmichael, do you know him?

A. Bob Carmichael, he is assistant treasurer or treasurer of the Commercial Trust Bank.

Q. Does he hold any political position?

A. He is a county park commissioner; he is president—he was president of the Carteret Club.

Q. Now, I show you a card entitled——

A. Very prominent in Jersey City, Bob Carmichael.

Q. I show you card entitled "Patriotic Rally," signed Robert S. Carmichael; that is the gentleman you refer to?

A. Yes, he is from the Chamber of Commerce.

Q. Now, do you know whether these cards were distributed on the streets of Jersey City or not?

A. I do not, I don't think they were.

Q. Now, among these ward clubs there is also one in the First Ward, is there not, Mayor?

A. Yes, sir.

Q. And that is presided over by William J. McGovern?

A. He is a city commissioner; yes, sir.

Q. And he is president or chairman or whatever you call it of that particular club?

A. Yes, sir; he is leader of that outfit.

Q. Leader of that outfit. And are there others? We have had now—that was the first, was it?

MR. MATTHEWS: First, Fourth, Seventh, Eighth.

Q. First, Fourth, Seventh, Eighth I think we have. Are there still others?

A. Yes, there is Eleventh, Twelfth, Tenth, Ninth, Sixth.

Q. And they all have leaders?

A. Oh, yes, every ward has got a leader.

Q. And who are the other leaders in those clubs that you just mentioned, could you remember them?

A. The First is Commissioner McGovern, Billy McGovern; the Second, John Kenny.

Q. What is his job?

A. He is a freeholder. We take good care of them. The Third, County Register William J. Sullivan; the Fourth is former Sheriff John Coppinger; the Fifth is Michael Scatturchio, he has no position at all, he is the contractor.

Q. How did that happen?

A. I suppose he finds it more profitable without a position. The Sixth is Freeholder Teddy Fleming; the Seventh, there is two sections, the North and the South, City Clerk Gene Ertle, and Jose McGurk, who is city treasurer. He is our candidate for sheriff. Eighth, Doc Donnelly; we call

him Doc, he never practiced medicine, he is a freeholder. Ninth, Sheriff Parle; Tenth, Freeholder Heffron; Eleventh, Commissioner and ex-Sheriff Driscoll, and Commissioner Tatum; Twelfth, Freeholder Sweeney and Commissioner Barney Johnson. It is divided. So they are substantial citizens, all of them.

Q. Except for Mr. Scattuorchio they all have jobs.

Q. All of those leaders have been associated with you politically for a great many years, haven't they?

A. Yes, I can say I raised every one of them.

Q. You referred to one of them, I think, as being the leader of the whole lot, or something of that kind.

A. The whole what?

Q. The whole group, or some such expression. You referred to one of the leaders. I think it was Commissioner McGovern that you mentioned.

A. Well, that's of that ward.

Q. Of that ward?

A. Yes.

Q. And you are the head of the whole group?

A. Well, I think I am.

Q. Yes.

A. I don't know for how long. They turn you out very frequently in other cities. I don't know.

Q. Now who is Hugh A. Kelly?

A. That's Colonel Kelly. He is secretary to Governor Moore.

Q. And he is the gentleman who was mentioned at the bottom of this note that is called the Veteran Law and Order Committee?

A. Yes, sir; yes, sir. That's Hugh Kelly.

MR. FRAZER: I would like to have it marked for identification.

MR. MATTHEWS: What are the contents of it, Spaulding?

MR. FRAZER: It is just a notice of a meeting of the veterans.

(Marked Exhibit P-35 for identification.)

MR. FRAZER: I would be very glad to let you see it, John, if you would like to.

(Handing to Mr. Matthews.)

MR. MATTHEWS: Thank you.

Q. Now, Colonel Kelly, he presided—did he preside that night of January the 6th?

A. Did he preside what?

MR. MATTHEWS: June.

Q. No, I am wrong. Colonel Kelly presided at the veterans' meeting on December 28, 1937, didn't he?

A. Yes.

Q. Were there resolutions passed?

A. Yes.

Q. And he also led the recent parade in Jersey City?

A. Yes, sir.

Q. I mean the parade last Monday.

A. I beg your pardon.

Q. The great parade last Monday?

A. Yes, yes.

MR. MATTHEWS: We have no objection to your offering that in evidence, Spaulding.

MR. FRAZER: What is that?

MR. MATTHEWS: That one you just showed me.

MR. FRAZER: I have no objection to putting it in evidence.

THE CLERK: P-35 in evidence.

(Received in evidence as Exhibit P-35.)

Q. Now, Mayor, in your speech of January 6th, at the opening you said you wanted to thank certain persons, veterans, labor organizations, and all the other sympa-

thetic groups for their kind co-operation, and you thanked most all the people of Jersey City who had filled this great building to capacity and were standing by the thousands in the streets outside, for this expression of their loyalty and support in "my efforts to protect our city from invasion by the Communists and other Red groups behind the mask of a labor organization."

I notice that in these cards that we have been examining and which have been marked as Exhibit P-34, it states "Representatives of the Communists and other Red radical groups are attempting to invade Jersey City behind the mask of a labor organization."

Is that similarity of phrase significant as to who was the author of the cards?

A. Of course, you repeated my statement there; that referred to the public meeting.

Q. I am referring to the public meeting. I have here a mimeographic copy of the address. I assume it is accurate.

A. If you will please let me explain this——

Q. Surely. I was trying to explain what——

A. When the CIO endeavored—when the controversy started with the CIO in Jersey City, nobody treated that very serious. We did not anticipate any great trouble, and there was no great trouble. The thing didn't look to me as serious. When the seamen entered from New York the first appearance that I had, or first information, rather, was from Garfield Hays. He appeared on the scene after the seamen had disappeared, with several other associates, and he started to wrap himself up in an American flag and demand that he would be protected under that flag.

Q. I think the Court is fairly familiar with that. That was testified to very fully in another case.

A. Yes. Well, of course I would like to get this as clear as possible, Counselor.

Now, I immediately anticipated that there was something moving that had no contact whatsoever with the CIO.

The first thing I learned of it, I was being sued for $25,000 by Garfield Hays and some other two men who I never met and don't know anything about. Why they should sue me I do not know. I wasn't present on any of the occasions, I know nothing at all about what transpired on the scenes, other than I was familiar with what Commissioner Casey was doing because of conferences that we held. Then the next thing after that litigation had been aired in this court, under the Honorable Judge, appeared the invasion of Mr. Carney, and then Mr. Ernest appeared in the picture, and from that day Mr. Ernest has made it very hot, and he has thrown everything that is possible—he has injected everything that is possible that I have christened a Red invasion. Now, we had no controversy, only one day, with the CIO. Now why they had entered into this picture with all these Congressmen and all these Red men who was classified as radicals, to inject themselves into this controversy—it has been on every since. Now, the CIO has apparently disappeared, but this whole affair is continuing and has continued for the last three or four months, under the leadership of the counsellor sitting at the table there, your associate counsel.

Q. Now, Mayor——

A. Our fight is not the CIO at the present time. That's why I charge the CIO that if these men represent it, they surely must be a radical group; they surely must have Red leanings, they must be leaning in the Red direction.

Q. Do I understand that the seamen's strike had nothing to do with the CIO?

A. Oh, yes, oh, it is a great unit. Harry Bridges is one of the noted leaders of the CIO——

Q. Then I misunderstood what you said. I thought you said you had no difficulty——

A. Oh, no. I said it started with Harry Bridges, and then came over into the Carney contingent. Carney then injected himself in it and that was all brought about through the activities of Garfield Hays.

Q. I thank you for making that clear to me. Now, may I bring you back to the questions to which I was addressing your attention?

I thought you did not understand me at the time.

There is marked similarity in the language used in the various cards sent out by the Democratic Ward Clubs and the opening remarks of your address, and whether that was any indication of the authorship of the two.

A. Counsel, if I had had presented to me a card that was to be sent broadcast all over Jersey City, and I thought that it was not strong enough, and it did not make a proper appeal, I would correct it, and I wouldn't be a bit surprised that I corrected it here.

Q. Might I ask you to read this and see whether you don't remember having done so?

A. Well, I can't say that; I can't say that. I say to you that if the language is similar, it must be so.

Q. Yes. Thank you.

MR. MATTHEWS: That, of course, if your Honor pleases, goes to that stock phrase in the letter; it isn't the entire letter or the entire card; and I think the question was misunderstood.

THE COURT: I thought he asked about the Red mask.

MR. MATTHEWS: What?

THE COURT: The Red mask. Wasn't that it?

MR. MATTHEWS: Yes. It is a stock phrase about the Red mask.

MR. FRAZER: Yes, an invasion behind the mask of the labor organization.

MR. MATTHEWS: It is a stock phrase for that kind of a movement.

MR. FRAZER: I am not criticizing it. I think it is a very happy phrase.

MR. MATTHEWS: For once, Spaulding, you and I are in agreement.

Q. You just referred in your last statement to the suit which Mr. Hays had instituted against you.

A. I just referred to what, Counselor?

Q. To a suit which Mr. Hays had instituted against you.

A. Yes.

Q. A $25,000 suit?

A. Yes.

Q. And the matter which was aired in this court was a suit in which the American Civil Liberties Union and the Boot and Shoe Workers Union, Local No. 454, Mr. Benjamin Burke, and one Mary Gresack and others were the plaintiffs.

Can you tell me whether the Boot and Shoe Workers Union, Local No. 654, was an A. F. of L. union?

A. I don't know.

Q. You don't know.

A. No. You see, there was no controversy as far as I was concerned about some little affair that was taking place at Exchange Place, Jersey City. I referred to Garfield Hays injecting himself over at the corner of Henderson and Fifteenth Streets, where the steamship companies are located. I know nothing at all about that. I know that that is the suit that he started with me, but I know nothing about it. Those two locations, Counselor, is about two and a half or three miles apart.

Q. I see. But now you made a pretty broad statement some time ago, that you never had had any labor difficulties in Jersey City. Wasn't there a period some years ago when the Pulaski Skyway was under construction, some difficulty with the employees of the McClintick Marshall Company, or one of those concerns?

A. Yes, sir.

Q. Wasn't that a labor difficulty?

A. Yes; a serious one.

Q. Very serious, wasn't it?

A. Yes, sir. There was a man killed, lost his life there.

Q. My recollection was that there was a continuous small army of police around there, was there not?

A. A small army of who?

Q. Of police.

A. Oh, yes. They had a temporary station there. They were stationed there permanently.

Q. Yes. So that there had been. I just wanted to call your attention to what I thought was an inaccuracy on your part.

A. We ended that trouble very abruptly, counsellor. There was a man killed, and we arrested 27 of the ringleaders.

Q. Yes. I remember it was quite serious.

A. And that ended the trouble, because the policemen took the whole matter in their hands.

Q. Now you, in your address of January 6th, thank, as I called your attention, the various persons for their "expression of loyalty and support in your efforts to protect our city from invasion."

Now, will you tell me of what those efforts consisted?

A. Well, I—will you repeat that again, Counsellor? I am just a little——

Q. You thanked them——

A. You mean my public address?

Q. Your public address, yes. This is your regular address——

A. Yes.

Q. —at the meeting in the armory that night.

A. Now, will you repeat that?

Q. Surely. You say here "I thank most of all the people of Jersey City," and so on, "for their expression of their loyalty and support in my efforts to protect our city from invasion by the Communists," and so forth.

Q. Now, would you tell me in what your efforts consisted that you were now thanking them for having supported you in?

A. Well, of course, in a movement of this character, particularly of such great importance that one who is the official head his principal desire is to have cooperation of the whole community, the people in general on every occasion that I have ever called upon the people of our city they have responded, and I was then thanking them for their presence, in the call to the people of Jersey City to present themselves and by their presence file a protest and to stamp their approval of the conduct of their public officials and of the civic bodies.

Q. I understand that. And you called attention to the fact that that is a demonstration of their support of you in your efforts to protect the city from invasion?

A. Of the movement.

Q. Well, now, I want to know what the efforts were which you made to protect the city from invasion, that is what you are thanking them for the support on.

A. Of course, when you find Harry Bridges endeavoring to come in there and tear things apart, similar to what he done on the West Coast——

Q. Well, has Harry Bridges ever been to Jersey City?

A. No, he directed his influence from New York.

Q. No, but he wasn't over there, was he?

A. But two of his strong-armed men, two of the noted killers now confined in the State Prison of Trenton for fourteen years——

Q. That was one of the efforts that you——

A. No, no, wait now.

Q. I am trying to get your efforts.

A. When you are confronted with conduct such as that and then a few weeks after the occurring of the CIO invasion, this is the CIO under the Bridges, naturally a man should be disturbed over the character of a man like Bridges entering the city or directing his forces to invade the city, and then the declaration of Mr. Carney, who is the Regional Director, that he was going to come into Jersey City law or no law, whichever every daily and every large newspaper

of the country carried, and probably at the time that they were due there there was probably one hundred newspaper men and cameramen there waiting to see just what the commotion was, and when I discovered that I was being confronted with the Civil Liberties and with all the other isms that goes with the Civil Liberties, I realized that I was confronted with a serious problem.

Q. I understand, but——

A. And naturally I was proud and pleased that the people responded to my call in my efforts to stamp out this invasion.

Q. I understand fully your feelings, Mayor, but what I wanted to know, which you haven't yet told me, is what you did, in what your efforts consisted, that you are so grateful for the support on, what did you do, what?

A. There was nothing on my part other than to engineer or try to advise whenever the occasion would warrant it; the police was handling the law and order side of the question and the people was resenting the invasion and the conduct of these people and naturally my instructions to the various groups, that is, the officials, was that they perform their duty as best they could.

Q. Well, now, what was their duty, did you define that in any way?

A. The police duty?

Q. Did you define that for them?

A. Oh, the police duty is defined without any explanation on my part, Counselor, the law is there. They are trained men, they know just what their duties are.

Q. Yes, you didn't really make any efforts at all, did you?

MR. MATTHEWS: I object.

A. Oh, plenty of effort.

Q. I want to try to find out what they are.

A. Well, a man by day and night trying to work out this whole question, I think there is plenty of efforts displayed there. Do you want me to explain any one individual act of mine?

Q. Yes, I would like to get a general picture of what you have done.

A. My public address at this large drive was one individual act; my conferences with the various heads of the various departments that has supervision over these disorderly conditions that may arise is two, and my complimentary remarks to the Chamber of Commerce and to all the other civil bodies is three, and I think that is sufficient.

Q. And the editing of the cards would be four?

A. I don't say that.

MR. MATTHEWS: I object, your Honor please; there is no statement that he edited the cards.

A. I wouldn't say that.

MR. FRAZER: I beg pardon, I understood him so to say.

MR. MATTHEWS: Not edited; he may have made corrections.

MR. FRAZER: Corrections. Very well.

Q. Was the veterans' meeting of December 28th one of your efforts?

A. No, I told you that long ago, Counselor, that was the mere publication of an application, that you or some other, Jerry O'Connell or Mr. Bernard or some of them had made that would arouse their Americanism, and they started themselves. You don't have to urge those men on.

Q. Mayor, do you approve of the rental of halls to Reds?

A. There has been quite a discussion about that, Counselor, in the public newspapers and the complaint of Mr. Ernst and of his associates,—I do not approve of any un-American groups coming into Jersey City. That is clearly demonstrated by my attitude.

Q. Now, won't you tell me what you mean by un-American?

A. Well, who is endeavoring to overthrow our Government, who is endeavoring to inject immorality into some talks of that character, that is another group. I am not charging that as the un-American group. I don't think it is patriotic, I don't think it falls within the performance of my duty to encourage halls to be rented to undesirables, men or groups who take it upon themselves to assail our Government and who is in favor of the overthrow of our Government.

Q. Well, now, do you conceive it as part of your duty to discourage the granting of halls to people of that type?

A. No—a mere expression from me, Counselor, is sufficient to men who has been associated with me, men who has lived in the city all their lives and who on numerous occasions have had talks and association with me, that is sufficient for them to feel that they are not working within the proper scope, if they encourage groups of that kind, when they know that the officials of Jersey City are distasteful to that type of gatherings forming in Jersey City.

Q. So that the mere expression of an opinion by you that the renting of halls to such persons would not, in your opinion, be a desirable thing, would be sufficient, would it not, for those people to fear——

A. Yes,—not fear now, don't put it in fear.

Q. Very well, let me withdraw that word. To make these people believe, is that all right, that the renting would arouse the resentment of the city authorities?

A. I could say, Counselor, that nearly every man who is the proprietor of a hall—as a rule a hall carries with it a saloon. I have been always active ever since Prohibition to restore liquor and to repeal Prohibition, and naturally I was a favorite amongst the liquor interests, that is, the men who desired to open cafes and restaurants and things of that kind. Now I become very well acquainted with all the proprietors of the halls, I presume I have talked in every hall in Jersey City fifty times during my political

career. That brought me in personal contact. They have on numerous occasions business at the City Hall on little minor affairs that they are interested in. That brings a very close relationship with the officials, and these proprietors. That being so, it does not require any force, Counselor, for them men to know just what the Mayor desires or what their friend desires. I never talked to a saloonkeeper or to a proprietor of a hall on this occasion, I never even intimated to any of them. Now, it has been charged that the police has tampered with them. I have failed to find any of that. It is natural that these charges are going to be made and they are going to be in circulation, but let me say this to you, Counselor, if it is permissible——

Q. Certainly.

A. We have never denied a permit in Jersey City since I was Mayor with the exception of only one, I think, until this controversy took place. We do not desire to stop anybody. I have issued on an average—when I say "I," the city government issued on an average three or four thousand permits to our opponents, our political opponents. One man even spoke under my window on three different occasions and the permit was granted because I never felt that anybody should be denied the right to talk. This question of free speech, Counselor, is not involved in this controversy. I want you to know that.

Q. Well, I am very glad to be assured of that, Mayor.

A. Let me complete now, Counselor,—just a minute. You started me now, I ought to be permitted——

Q. I haven't interrupted you, have I?

A. No. Now, we have never denied a permit until this controversy arose, the first application that we received concerning this trouble that we are confronted with today. Arthur, I think, Garfield Hays was stated as one of the speakers, Arthur Baldwin was the other.

Q. Roger Baldwin?

A. Roger Baldwin. And I think Mr. Ernst was the other, I am not sure. Now, on top of all this controversy

and all this trouble and all this uprising the public body which I have the honor of presiding over thought that that was a serious, dangerous practice for us to go in in the face of all this uprising and in the face of all this unrest that was appearing in Jersey City, for us to let this group come in here and start these attacks upon the Government and upon the city officials; and the result was that this whole controversy has taken place only since this trouble has started. Now, I have no desire to stop anybody from talking but in the face of this trouble I cannot surrender, the City of Jersey City cannot surrender and permit this invasion of these men. Do you think that Bernard is a proper man, even though he is a member of Congress—now, just a minute, Counselor,—that was the honored guest at the Communistic parade on May 1st, only last month?

Q. Now, do you know that, Mayor?

A. Just a minute.

Q. The papers again.

A. Just a minute, Counselor. When you see his picture, a photograph, and published in our daily newspapers, that is sufficient for me.

Q. I don't know the gentleman.

A. Oh, I don't know him either. Now, do you think that he is a proper man to come into Jersey City under the circumstances? I do not.

Q. Well, I don't suppose it makes much difference what I think.

A. Do you think Jerry O'Connell is, when he and Bernard went over to Red Spain as representatives of the Communist Party and their expenses paid by the Communist Party, do you think they are proper men to appear upon the streets of Jersey City?

Q. Do you know that? That that is a fact, that their expenses were paid, do you know that that is a fact?

A. The public newspapers carry it. Bring Jerry O'Connell on here, Counselor, and let him answer that for himself.

Q. I am not interested in Mr. O'Connell. You seem to be much more interested than I am, Mayor.

A. I am not worried a particle, I am not worried a particle. Of course, if it is distasteful for you to hear about Bernard, I am sorry.

Q. Not at all, if it gives you any pleasure.

A. But you must remember we have to expose this, Counselor, we cannot suppress it.

Q. What is it you are trying to expose?

A. I am trying to show that this CIO is governed by Communists of this country; I want to show that the movement is Communistic.

Q. Now, do you think that you show that by having your police attack men for distributing circulars, does that establish anything of that sort?

A. No, that's minor, Counselor, that is only minor.

Q. Do you establish it by having your police rush Mr. Thomas out of the city?

A. That is minor too; that depends upon circumstances. Don't you think the police would display sound judgment if they thought there was danger of this man meeting with violence? You would think it was sound judgment if you thought a man's life was in danger.

Q. I am trying to ascertain from you how by means of forcing people into automobiles, taking away their circulars, preventing their having permits, you are exposing the control by Communists and Red groups of the CIO organization. I don't see that it has any relevancy. I would like to have you explain that to me.

A. Depends on circumstances, Counselor. If the distribution of circulars has caused any disruption or caused unrest in the neighborhood in which they are appearing and that there is protest and complaints from the people to whom these circulars were entrusted on their person and that the remarks of the distributors are of an insulting nature, I say that that warrants the action of a police officer.

Now, to arrest him would only mean what they desire. Their whole stock in trade is to appear in police courts for publicity purposes. For Mr. Thomas to appear at a gathering where riots has been apparently ready to explode, and Mr. Thomas confronted with a high police official and asked not to deliver his public address there, first without a permit and second that there was danger surrounding his presence, I don't see where there was any great outrage committed when that man was removed and told to go back to New York.

Q. No, but did that show the connection between the CIO and the Red organizations? That was what I wanted to find out?

A. Yes, yes, I explained——

Q. How was that?

A. I explained that at the beginning when this CIO trouble started, who made their appearance? Under the leadership of the learned counsel, along comes Roger Baldwin, along comes Garfield Hays, along comes—and, remember: do you realize that this same man, Norman Thomas—his picture appeared in the *New York Times* with his clinched fist, making a Russian salute—do you realize that his utterance on that day said that he was coming to Jersey City and for them to not to display the Red flag?

Q. Well now, would you stop somebody from doing a "Heil Hitler"?

MR. MATTHEWS: That wasn't a "Heil Hitler." He said clenched fist.

MR. FRAZER: No, I am asking him whether he would stop anybody from doing a "Heil Hitler."

A. Singing the nationale—does that indicate that this man is a communist?

Q. I don't know what it does; I am sure.

A. Well, Counselor——

Q. I don't know.

A. You are endeavoring to try to get the facts. If the people are aroused by the presence of this man, because of his conduct and because of his manner in which he has conducted himself at a May Day parade, which is Communistic, in Madison Square Park in the City of New York, don't blame me for that.

Q. Well, Mayor, may I ask you this: you said a little while ago that you thought on account of your long connection with public affairs in Jersey City, and the affection which the people there held you in, that in the matter of renting halls, let's say, the persons who owned halls would only need a suggestion from you. I mean——

A. No——

MR. MATTHEWS: I object to that.

MR. FRAZER: One moment, one moment.

MR. MATTHEWS: That isn't his testimony.

Q. Not a suggestion to them directly.

A. No.

Q. But——

A. If they find that I am in a controversy——

Q. Yes; they would deny the halls, just automatically, wouldn't they?

A. There is no question about that, Counselor; there is no question about it.

Q. I am not trying to misstate it. I am just summarizing what you said.

A. No. I am free to say that I feel that the proprietors of the halls in Jersey City would not endeavor to offend the officials of Jersey City, knowing that.

Q. Yes. Now——

A. Of course, we had a controversy—the communists had rented a hall in Jersey City, and when the proprietor

learned who they were, he had accepted a deposit of $5, he returned the deposit and said that because of the fact that they were the communist group, that he could not rent his hall, and he hereby cancelled it. They took that case before Vice Chancellor Fielder, and Vice Chancellor Fielder ruled against us and said that we have no right to stop any private hall gathering, and since then we have never attempted —even on that occasion we didn't attempt. That was a proprietor who returned the deposit.

Q. Well now then, as I understand it——

A. And, keep this in mind, Counselor: CIO had public meetings in our halls. I have seen the CIO having a public gathering with 1500 or 2000 people.

Q. Oh, yes. They have so admitted. They said up to a certain date they had no difficulty.

A. Up until this trouble. Now, I didn't stop them from coming into halls. They have three headquarters in Jersey City, and they have never been molested; irrespective of what they said here I say to you that nobody has ever molested them. They are welcome in Jersey City as long as they are lawabiding. Nobody has ever molested them. They go about their business. They transact their affairs. Nobody has ever lifted a finger in Jersey City against the CIO, until Carney's statement. That is, when he said he was coming to Jersey City, law or no law.

Q. Did you know that Mr. Samuel Macri was assaulted in Jersey City on May or June—what was it? What was the date of that meeting? May 27th?

A. Are you talking about the Jerry O'Connell affair?

Q. Yes.

A. At Pershing Field?

Q. Yes. Did you know that Mr. Samuel Macri, an organizer for the CIO was slugged there?

A. Well, I don't know.

Q. So that he was unconscious for nearly twenty-four hours?

A. Well, how did he get out of there? The newspaper account says he walked out of there. How was he unconscious for twenty-four hours?

Q. Well,——

A. Does he walk in his sleep?

Q. The newspaper account apparently was inaccurate, then?

A. Well,——

Q. Mr. Macri himself testified that he was unconscious, and the next thing he knew he was in a hospital. How did he get there?

MR. MATTHEWS: I think the testimony ought to be before the Mayor. Macri testified this morning he didn't know who hit him.

A. If he was in Jersey City he must have been very unconscious when he found his way over here.

Q. I simply wanted to inquire whether you would consider that being molested?

A. I am only talking from the newspaper account.

Q. Yes.

A. Which says he was hit on the chin and he knew nothing until he woke up in this hospital.

MR. MATTHEWS: And he didn't know who hit him.

A. (Continuing.) Well, how did he find the hospital?

Q. I don't know.

A. I don't know either.

MR. MATTHEWS: A radio beam carried him, perhaps.

A. (Continuing.) He surely must not have been telling the truth.

Q. He was obviously laid up, and I was wondering why he wasn't down at the Jersey City Hospital; but he wasn't

A. I don't know. There was one man there at some celebration or some affair who says he was hit, and he went over to the maternity hospital, and they wouldn't take him there. Why should they take him in the maternity hospital?

MR. MATTHEWS: He wasn't going to have a baby, your Honor.

A. (Continuing.) He went away then. There was the big Medical Center next to him, and he wouldn't go in there.

Q. Well, perhaps he was a little dizzy from not knowing which building he was going to. Was anything ever done about Macri's assault? Was it ever investigated?

A. I don't think, Counselor, it was ever officially reported.

Q. Really?

A. I don't think so.

Q. There were a great many policemen there that night, weren't there?

A. I don't know.

Q. 500, I believe.

A. Well, the police pretty well protect everybody.

THE COURT: 10:30 Tuesday morning. You want the witness to return?

MR. FRAZER: Yes.

THE COURT: I am sure the Mayor wishes to return.

(Adjourned to 10:30 A. M., Tuesday, June 14, 1938.)

Tuesday, June 14, 1938.

Case continued.

Appearances as before.

FRANK HAGUE resumed the stand.

DIRECT EXAMINATION (Continued).

By MR. FRAZER:

THE COURT: Have you the last question?

MR. FRAZER: The last question was something of a joke, your Honor, something about having a baby; I think I can pick up the examination.

THE COURT: Do you want to see it, Mr. Frazer?

MR. FRAZER: No, I have a copy of it, sir.

Q. Mayor, you have testified on a number of occasions that you got your information from the pages of the *Jersey Journal*. Right?

A. I didn't say *Jersey Journal*,—the newspapers.

Q. But you did specifically mention the *Jersey Journal*.

A. Did I confine it to the *Jersey Journal?*

Q. No, I don't think you confined it to the *Jersey Journal* but you did refer on a number of occasions to the *Jersey Journal* as being the source of your information. Did you see last Friday evening's *Jersey Journal?*

A. I think I did. I read it as a rule every night.

Q. I picked this up after court Friday afternoon and noticed an article in here about Borough President Harvey. Did you read that, his commendation of you, as you and he being the only two——

A. I think I read that in one of the New York papers.

Q. But you did see the statement of the Borough president?

A. Yes.

Q. You were asked whether you agreed with the statement that the only two men in the east who think more of their country than they do of themselves were Mr. Harvey and yourself; is that right?

A. Am I quoted as saying that?

Q. Yes. I will read you what it says:

"Mayor Hague said he agreed with President George U. Harvey of Queens, New York, that he and Hague were the only two men in the east who think more of their country than they do of themselves."

Are you correctly quoted there?

A. No, I don't think I made that remark about we are the only two men in the east. I think that's an error, Counselor.

Q. Well, that was the statement, however, wasn't it, of the borough president?

A. I think it was.

Q. Yes.

A. I didn't make that.

Q. Now, did you read the rest of the borough president's remarks?

A. What do you refer to, Counselor?

Q. Well, that was a general statement which he made at that time; when he said that "I am for Hague one hundred percent. We need more like him." Then he went on and made the statement in which those other words were a part.

MR. MATTHEWS: I object. I ask that the witness be allowed to read the statement, if he is going to ask whether he recollects anything about it.

Q. Well, I show you a statement here——

MR. MATTHEWS: Read it, Mayor, carefully.

Q. —that appears in the *Jersey Journal* of last Friday. You did read that, didn't you, sir?

A. Well, what about it, Counselor? What do you refer to?

Q. Well, I was wondering whether you agreed with the principles that he set forth in that statement.

MR. MATTHEWS: I object, if your Honor please, totally immaterial to this issue whether the Mayor does or not.

THE COURT: What are the principles?

MR. FRAZER: Well, Mr. Harvey states certain things about how he believes communists should be handled. I want to find out whether that is the Mayor's conception too.

MR. MATTHEWS: I object to that. It is immaterial to this issue whether he thinks what Mr. Harvey says is correct or not.

MR. FRAZER: It is a frank statement of attitude toward communists.

A. Well, I prefer you to ask me that direct. Why do you want me, to—why do you refer to Mr. Harvey as to whether I approve of his views or not?

Q. Because it seemed to me that there was an expression by you that Mr. Harvey and you were in agreement fundamentally upon the principles of this case.

MR. MATTHEWS: No, that's not——

Q. And one of the principles I wanted to see whether you were——

MR. MATTHEWS: That is objected to; there is no such statement by the Mayor, that he is in agreement with Mr. Harvey about the fundamental principles——

THE COURT: Mr. Frazer, read what Mr. Harvey said and ask the Mayor if that is his view.

MR. MATTHEWS: Your Honor will allow me an exception to that?

THE COURT: Yes.

(Which exception is hereby allowed and seal accordingly.)

(Sealed)

MR. FRAZER: Very well, sir.

Q. "I am for Hague 100 percent. We need more like him," Mr. Harvey shouted, first before 100 members of the Civic League of Glendale, and again a few minutes later before 400 men attending the annual convention of the Queens County Council of the Veterans of Foreign Wars. "That locates them." Mr. Harvey's support of Mayor Hague was followed by a denunciation of communism and of a number of New York City officials, including Mayor F. H. LaGuardia, District Attorney Thomas E. Dewey, Borough President Stanley M. Isaacs of Manhattan, who he charged are affiliated with the American Labor Party, which is a communist adjunct, and appointed A. L. P. members to office.

MR. MATTHEWS: Now, your Honor will see that to ask Mayor Hague whether he agrees with that——

THE COURT: I thought there was something about the treatment of communists

MR. FRAZER: Well, there is. I thought your Honor asked me to read the statement. I will skip a little.

Q. "'During the campaign last year the American Labor Party came to me and wanted to give me their support. I told them I didn't want their votes. There are only two men in the East who think more of their country than they do of themselves, they are Mayor Hague and myself.' Mr. Harvey charged that New York City municipal colleges, as well as the government, were honeycombed with Communists. 'I have no objection to Dictator Stalin in Russia, Dictator Hitler in Germany and Dictator Mussolini in Italy,' he said, 'that is not our business. As for those who don't like our government, why don't they go back to Russia or Italy or Germany? Why don't they go back where they came from?' ". Do you agree to that?

MR. MATTHEWS: I object to that, totally immaterial, whether he agrees with it, and why is the statement of Borough President Harvey made in New York relevant to this issue?

THE COURT: I cannot see what Mr. Harvey has to do with it. I think you can ask the Mayor what his views are. Ask him in direct form.

Q. Do you believe that persons who believe in the doctrines of Stalin, Hitler and Mussolini should go back to those countries?

A. Do I believe what?

Q. That persons who believe in the doctrines of Stalin, Mussolini and Hitler should go back to Russia, Italy or Germany?

A. I believe that anyone who comes here and is discovered displeased with the methods of our country and our government, and feel that it is necessary for them to set themselves up as objectors to the form of government that we enjoy here and find that this country is apparently not pleasing to them, they should be driven back, not go back, driven back.

Q. Driven back?

A. Yes, sir.

Q. Suppose they were born in this country, should they be driven back then?

A. Well, I think we ought to establish a camp in Alaska there and house them there and keep them there away from the American people, if they don't believe in our form of government and are opposed to every move of our form of government. I think there should be a remedy for that.

Q. You don't think they should be able to urge a change in the form of government?

MR. MATTHEWS: Now, I object to that question, if your Honor please, and Mr. Mayor, it is not fair to the witness, "urge in the fashion of revolution" or "urge in the making of statements about defects in the

running of the government" or "urge about something that is actually wrong in the running of the government?" There must be a distinction; Mr. Mayor, what you said is you would put in Alaska all of those fellows that want to destroy America by revolution and in that your counsel agrees with you.

Q. Well now, referring a moment to Mr. Harvey and his statement, he said that the public officials in New York City looking for votes were responsible for the growth of the Communist Party here. Do you think that is true?

MR. MATTHEWS: I object, if your Honor please. How is that material to this issue, what the officials in New York think, or for the Mayor to interpret their thinking?

THE COURT: I don't see how that is material here.

Q. Well do you believe, Mr. Mayor, that the search of public officials for votes is responsible for the growth of the Communist Party?

MR. MATTHEWS: I object, if your Honor please, as immaterial to this issue.

THE COURT: It seems to me that calls for speculation.

MR. FRAZER: Well, may it please the Court, the Mayor's testimony has related to a very large degree to communists, and people of that sort, and I am trying to ascertain what his attitude is toward those whom he has thus described.

MR. MATTHEWS: But he is trying to do it out of the lips of another.

THE COURT: Ask him the direct question then.

MR. FRAZER: I did, I thought.

THE COURT: No, you put in something about New York City.

MR. FRAZER: No, I changed it, if your Honor will recall.

THE COURT: Oh.

MR. FRAZER: And put it directly: whether he believes that the search by politicians for votes is responsible for the growth of the Communist Party.

MR. MATTHEWS: Now, that, of course, if your Honor please, is irrelevant to this issue.

THE WITNESS: Counselor, I would like to be permitted to answer that question.

MR. MATTHEWS: Very well, Mr. Mayor, go ahead.

A. There is nothing that I have any hesitancy in expressing myself in regards to anything concerning labor. Anything concerning any groups, I have always assumed that if it was unAmerican, I should never hesitate in expressing myself, and I have never hesitated in expressing myself, Counselor. I do feel that it is an error for public officials to be seeking these votes of the American Labor Party. I have branded the American Labor Party as being a communistic group. I can prove that they are communistic. I can prove that every one associated with the group here in New Jersey that I charged was an adjunct to the communistic group, that the American Labor Party that was organized in New Jersey was nothing pure and simple but a communist, and I wanted nothing to do with it. So much so that they have declared now that they are not going to inaugurate a ticket at the general election. They are going to select their own choices; they don't dare put in a ticket at the general election. That's my expression.

Q. Now, do you believe——

A. I would like them to put a ticket in and let the people determine and let the people have to take sides, as to who they wish to vote for, whether they wish to vote for a hundred per cent. Americans or whether they wish to vote for the left wing of this group.

Q. Now do you think that the scramble for votes at the election will lead to candidates going to support those elements that you——

A. No question about that. The candidates that seek that type of support should be defeated.

Q. Now, as to the members of organizations, do you remember that Mr. Harvey said they gave communists a dose of castor oil in addition to the rubber hose in Italy, and reminded his hearers that he was among the first in New York to advocate the use of rubber hoses on communists? Do you remember that in the statement?

Mr. Matthews: Now, if your Honor please, how is that material.

A. No, I don't.

Q. Does that express your belief?

A. No.

Q. As to the treatment which should be accorded to them?

A. I believe in lawful procedure, Counselor; and of course—let me state if it is agreeable?

Q. Surely.

A. As to the members of the Labor Party, when the American Federation of Labor in New York withdrew their support from the American Labor Party, of course that withdrew an element that has always demonstrated in my estimation their true Americanism, and I can say now that there is a great—thousands of members of the American party throughout this country, American Labor Party, that are absolutely good Americans, true Americans. They are being deceived, the same as I have expressed myself on the CIO. We have members of the CIO that's true, real true Americans, but they are being misled; they will wake up to the fact that they are being misled, and I hope to be one of the persons who is going to enlighten them as to their mistake.

The Court: Will you excuse me a moment, Counselor?

(At this point a short recess was taken.)

Q. Mr. Mayor, do you know a man named Brophy, who is a member of the Catholic War Veterans of Jersey City?

A. Jersey City boy?

Q. Yes.

A. Yes, sir.

Q. They say he is a WPA worker; is he?

A. I don't know how he is employed. Dr. Brophy is his brother.

Q. You remember seeing a statement by him that the Veterans in the assembly that they were to make in Journal Square should come armed with rubber hoses?

MR. MATTHEWS: Now, if your Honor please, how is this material or relevant to this issue——

A. Yes, sir.

MR. MATTHEWS: —what people said?

MR. FRAZER: The Mayor answered it; he said yes, sir, he remembered the statement.

MR. MATTHEWS: Mr. Mayor, this is irrelevant to this issue and at this point of the testimony I ask that no irrelevant testimony be allowed, that the witness be instructed to wait until counsel's objections are lodged, because after all, Mr. Mayor, that is not relevant, what somebody else may have said. However, I will let the question remain in so far as no objection goes to it in the record.

Q. He has nothing to do with the Brophy whom you mentioned earlier in your testimony in connection with some of the CIO leaders, has he?

A. No, sir.

Q. Now, as a matter of fact, did the veterans appear that night with rubber hoses?

A. I do not know, I don't think so; I wasn't there.

Q. As a matter of fact, they didn't from the newspaper report, did they?

A. No, they didn't. That is a statement, as I assume, from a man who is enthused, a little bit more enthusiastic than the average man, and they make statements like that. They don't ever amount to anything, Counselor. They don't disturb me because I never anticipated any disorder.

Q. Well, as a matter of fact, there was some request made that they would not bring rubber hoses, wasn't there?

A. Well, it was laughed at seriously; he realized that it was a joke himself.

Q. But he was requested not to and the veterans were requested not to?

A. There was public statements along that line by Commissioner Casey and them.

Q. Yes, that is what I understood. So that the mere statement by the municipal authorities of opposition to that kind of conduct was sufficient to control it, was it not?

MR. MATTHEWS: I object.

A. I imagine so.

Q. Frank H. Eggers is your nephew and secretary now, is he not?

A. Yes, sir.

Q. He is quoted as having said——

MR. MATTHEWS: I object, if your Honor please.

MR. FRAZER: Well, I think this is——

MR. MATTHEWS: How can——

MR. FRAZER: —expressive of policy.

MR. MATTHEWS: —what others said in newspapers have any effect upon this case? Not relevant to this case.

THE COURT: Ask the direct question, Mr. Frazer.

MR. FRAZER: Well, I don't think I should be so confined. Here is a man who stands in very close relation with the Mayor, whose utterances in the public mind

will be assumed to have been more or less inspired, who should be expressive of the policy of the office which he is representing in the capacity almost of alter ego in certain relationships. I want to call the Mayor's attention to the statement which he is alleged to have made to ascertain whether that is the official policy.

THE COURT: Then ask the direct question.

MR. MATTHEWS: Is it the official policy, should be the question.

Q. Was there any suggestion made as a result of the so-called CIO invasion and the ejection of the unionists from the city? "If you come back it won't be on a ferry boat that you will go back on; you will go onto the dock and into the river."

A. Who said that?

Q. Judge Eggers is alleged to have said that.

A. Would you repeat that, Counselor, so that I can——

Q. Yes, sir. Perhaps if I gave you the——

A. Is this an address he is delivering or a statement?

Q. This is the newspaper account, which says "Former Judge Frank H. Eggers, private secretary to his uncle, Mayor Frank Hague, last night described the incidents surrounding the CIO invasion," quoting the word "invasion," "of Jersey City and the ejection of the unionists from the city. William J. Carney announced he would lead three thousand men into Jersey City and take over industry on November 29th. Eggers told Division 18 of the Auxiliary of the Ancient Order of Hibernians when he came up Montgomery Street with those pickets they were met by your police department who escorted them out and said, "If you come back it won't be on a ferry boat you will go back on; you will go onto the dock and into the river."

A. Well, Judge Eggers didn't say that; he said the police——

Q. The police did.

A. Oh, I don't know anything about that.

Q. Well, do you think Judge Eggers is properly quoted and was he properly quoting the police?

A. He may be, I won't dispute that.

Q. You wouldn't dispute that?

A. No.

Q. You knew he was going to make that address, didn't you?

A. No, he makes numerous addresses and I approve of everything he does say.

Q. Now, earlier in your examination, Mayor, I called your attention to a newspaper article in which you were quoted and you indicated that you perhaps were misquoted from that particular paper, so that I have a different clipping from the *Jersey Journal* of December 9, 1937, in relation to the same subject. "Mayor Frank Hague of Jersey City said today he regards as an attempted invasion the efforts of the Committee for Industrial Organization to organize Jersey City workers. Asked who decides the question the Mayor said, 'I decide, I do.' Then tapping his forefinger on his chest he added, 'Me, right here.'"

Now, calling your attention to the fact that that appeared in the Jersey Journal under that date would that refresh your memory as to whether you said those words or not?

A. No, that is the same article, Counselor, that I referred to. I said that I was dealing with a hostile group of newspaper men who was endeavoring to ascertain from me something that would be beneficial to their group, who was the CIO, as I viewed it, and this is a reprint. There is thousands of papers carried that; that went over the A. P. wires, and the same thing applies to all the papers.

Q. So that doesn't refresh your memory?

A. No.

Q. In regard to that incident?

A. That's just an A. P. wire that was sent from New York.

Q. Now, Mayor, you never denied the report that was thus widespread through the associated press, did you?

A. No. I make it a practice that the less said about those types of misquotes, the better for everybody concerned, because you never get any of the best of it, you can't catch up with a story of that character, Counselor; so I left it unsaid, unanswered, rather.

Q. Well, is it a fact that you were the one who decides?

A. One what?

Q. As you were quoted as having said? Is it fact?

A. That's true.

Q. Now you have also referred on numerous occasions to Mr. Carney's so-called invasion, 3000 strong.

A. (The witness nodded.)

Q. And I call your attention to a clip from the *Jersey Journal* of November 24, 1937. That was five days before the so-called invasion.

A. (The witness nodded.)

Q. Which took place on the 29th, as I recall?

A. Yes; whatever the dates are.

Q. In that statement from the *Jersey Journal* it says, "According to present plans some 2000 CIO organizers and workers will meet in Jersey City and will march to a number of the larger industrial plants for the purpose of distributing circulars."

You notice it says 2000 and not 3000, as you have many times said.

A. (The witness nodded.)

Q. And if 2000 men came, just for the purpose of distributing circulars, you wouldn't consider that an invasion, would you?

A. Yes, yes, yes.

Q. Would that——

A. That's a mild statement, to what the original statement was, Counselor. The original statement appeared in the *Bergen Record*, who was present the meeting with Mr. Carney. It was the *Bergen Record;* if he refers to the *Bergen Record,* if you have that——

Q. I haven't it in my files. Have you it, sir?

A. No. You could find out just exactly as to the young man who was present and who took it in shorthand, just what transpired. It was the *Bergen Record* that we were guided by. It is from the *Bergen Record* that all these other papers copied their stories.

Q. Well, now, why did you give that credit to the *Bergen Record*?

A. Because they were the original paper that broke this story. They were the first ones to break it.

Q. Well, now, in the *Jersey Journal* article, Carney, one of the plaintiffs here, is quoted as saying, in speaking of the drive, "We will go to Jersey City to organize in a peaceful manner. Whether this will be possible in the face of denials of civil rights in that city I am unable to say at this time."

Did they not come to Jersey City in a peaceful manner?

A. Now, just a minute, Counselor. That statement that Carney makes is after his wild, furious statement that he made prior to that. He was advised to correct his statement, apparently, and this is the result of a mild, careful, planned statement.

Q. Do you know that?

A. Oh,——

Q. Do you know that to be a fact, that he was advised——

A. Oh, there was such a great difference in both statements. One was the statement reported by the *Bergen Record,* that was copied by numerous papers throughout the country, and then afterwards, after a lull—if you note, I have never said a word from the issuance of that statement up until the time these men entered Jersey City; I was never quoted on any statement whatsoever, because I was waiting to see just what the results was and what really was behind the original statement.

Q. Now, you made preparations, however, on the theory that 2000 men would come in?

A. 3000.

Q. 3000, was it?

A. (The witness nodded.)

Q. That's what the original statement had?

A. Yes.

Q. Not two thousand in the *Jersey Journal*?

A. Yes.

Q. And you made police arrangements commensurate with the anticipated coming of three thousand men?

A. Well, you would if you read the original statement.

Q. Well,——

A. You would naturally prepare for any disorder. If these men—if Carney was quoted correctly, which I assumed he was, by the *Bergen Record*, that he was coming in, law or no order, he was going to take it over.

Q. Now, that preparation therefore, as you believed the *Bergen Record*, was made commensurate to that number of invaders, so-called?

A. Yes; and all our daily papers throughout the Metropolitan Area published that and quoted it. As a result there was probably a hundred and fifty camera men down there and probably fifty, sixty or seventy reporters, all waiting for these men to arrive.

Q. Well, Mayor, I wonder whether I can refresh your memory, perhaps, as to the number of persons who were there, by reference to a statement which is attributed to you by the *New York Times* on January 12th of this year; before this attempted invasion of theirs, they had never asked for a permit to hold a meeting in any public place.

"The first I knew about it was when I read their announcement in the *Press* that they were going to invade Jersey City with an army of three thousand men, and were going to hold a parade, stage a public meeting, and distribute handbills, all in violation of law. There was the same defiance of constituted authorities, the same flaunting of law, that had accompanied CIO strikes in the west. There was no strike here, no demand from the workers by Jersey City for

them to come in here. If even twenty or thirty percent of the people of Jersey City were in sympathy with them, and welcomed their arrival, there might be some justification for their attitude, but there is no such picture here."

So that was the basis of your defense measures, was it?

A. (The witness nodded.)

Q. "Only about forty of them came"—you are quoted as saying—"all outsiders, CIO and Civil Liberties officials, organizers, and lawyers from New York and Newark."

Now, does that refresh your memory as to the numbers that came over?

MR. MATTHEWS: I object, if your Honor please. The Mayor had said there were camera men in that number.

A. Oh, I was talking about the wide publicity it received, that it attracted the attention of the Metropolitan press and all the various neighboring cities.

Q. As I recall it——

A. They had their staff writers and everybody present to see the circus, as they pictured it.

Q. As I recall, on your earlier testimony you said that there were a hundred or two hundred?

A. That is all.

Q. Not over two hundred?

A. No, there wasn't.

Q. But I just wanted to call to your attention that at the time——

A. There wasn't——

Q. You said there were only about 40 of them, all outsiders, CIO and Civil Liberties officials, organizers and lawyers from New York and Newark. "The police met them and escorted them to the city line."

Do you think that was such a demonstration, so modest in size, that the police had a right to do that?

A. Well, Counselor, of course, if you are advised beforehand that there is to be an invasion by a group of men that's coming for the purpose of defying law and order, naturally you are going to be prepared. That was our information. We had to assume that the quotations in these papers was correct.

Q. Yes, but I mean when you saw that this travail of the mountain had borne the mouse of forty men, did you think your forces——

A. We didn't anticipate that. We had to assume that Carney's statement was correct.

Q. But not when you actually were there, confronted with the situation?

A. No.

Q. Were the same methods of force required to handle forty men that would have been required to handle two thousand?

A. Oh, there were more than forty. There was close to two hundred.

Q. Well, the newspaper men and the photographers were not disorderly, were they?

A. Oh, no, no, no. We are talking about the men that went into this headquarters.

Q. Well, now, the testimony in this case from people who were actually in the headquarters would indicate that there might have been from forty to fifty people there altogether.

A. I don't agree——

Q. Including observers and so on.

A. Not from the police report. The police report gives it far over two hundred men and women.

Q. Now, in this same interview, when asked whether it wasn't a violation of civil rights arbitrarily to throw them out, you were quoted as saying, "no, they went peacefully, didn't they? The police didn't want to arrest a lot of people, but keep these outsiders, who had no business here, out of the city."

You said that substantially, on your examination earlier, didn't you?

A. Yes. Well the police had no desire to arrest them. They have no desire to arrest anybody, for——

Q. The police handled them gently——

MR. HERSHENSTEIN: Let him finish.

MR. FRAZER: I thought he had finished.

Q. Did I interrupt you, Mayor? I didn't mean to.

A. What I wanted to say was, the police have no desire—that is, the heads of the police department—to arrest anyone for a mere violation of a city ordinance of that character. Their purpose is to try to remove them from danger and from scenes there so that they would go peacefully away. They have no desire, and you might note that on the distribution of circulars they had no desire to arrest; but in this particular case, Counselor, the thing got so serious and got—developed into such great proportions, that the police decided, with Commissioner Casey and myself, that the proper thing to do was to serve notice upon these people that they were in violation of the law. They were advised by Carney and their friends that there was no violation of the law, because that has been their contention, that they have a right for a free distribution of circulars, that they have a right to free assemblage, that they have a right to free speech. Now, that has been impressed upon every one of these folks. So they came over with that thought.

Q. Well, isn't that a proper thought?

A. Well, now, wait. I thought the proper thing to do was to enlighten them as mildly as we could, to let them know that there was law and order in Jersey City, that they were in violation of the city ordinance, that this unlawful assemblage was a violation of the state's statute. We had to proceed with as small a number as possible. If you will note, there was only five or six of those men that was distributing circulars all around these factories that was brought to headquarters and charged with the unlawful

violation of that ordinance, and the heads, ringleaders, was arrested for unlawful assemblage. Now, that was only done purposely to let everybody know that there was law and order, and that they were in violation of the law.

Q. Now, what was——

A. That's why the others was escorted away.

Q. What was unlawful in that assemblage?

A. Well, when the police head repeated to the men who was the head of this group that assembled there, as I said two hundred or more, they notified them that they were unlawfully assembled, that there was an ordinance there prohibiting this distribution of circulars and that that was in violation of the law.

Q. Now, was there any authority or any place for them to go to and get permits to distribute? There wasn't anything in the ordinance.

A. Oh, no, there was nobody could get any permits.

Q. Suppose they honestly believed that the police construction of this ordinance was improper and that they did have the right, which they were asserting, was there any way in which they could bring that matter to a test except to attempt the circular distribution?

A. Well, now, there was——

Q. Will you answer me that? Was there any way that they could do it?

A. I wanted to say to you, Counselor——

Q. I want an answer to that question.

A. Yes or no? I am going to answer it.

Q. Is there any other way that they could test this ordinance except by coming to the city and distributing them?

A. I am going to show you that the ordinance was tested by a group in Jersey City and brought to our Supreme Court and decided by Justice Case, in I think it was Branch 2. Now, there was a group of men who took it upon themselves that they were being deprived of their rights of the distribution of advertising circulars, so they engaged a

lawyer and the lawyer took the matter up before the Supreme Court of New Jersey, the Second Branch, and they decided, in the opinion written by Justice Case, sustaining the local ordinance. Now, why didn't they test it in that way instead of—why didn't they get their counsel to go into litigation and test that instead of coming over there with "law or no law," that they were going to assume their constitutional rights? Why don't they let the courts decide?

THE COURT: I have never seen those proceedings, Mr. Hamill; I have never been able to find out how they did test it.

MR. FRAZER: I beg your pardon, your Honor.

THE COURT: I say I have never been able to find out how that test was carried out.

MR. HAMILL: Which one do you mean?

THE COURT: The one the Mayor is speaking about, the alleged advertising circular case.

MR. HAMILL: Well, they didn't have to come in, any taxpayer or citizen who had a special interest in that could come in and test the validity of that ordinance without coming in in numbers to test it. That is what he is saying.

THE COURT: I asked to have that opinion the other day so that I could see how it was done in that case. What is the citation?

MR. HAMILL: There was no necessity for this violation.

THE COURT: I understand.

MR. HAMILL: It could have been——

THE COURT: Have you got the opinion?

(Opinion handed to the Court.)

THE COURT: Well, it was tes' .d in exactly the same way, Mr. Hamill; they were arrested and convicted exactly the same way that took place here. I thought that was what had happened.

MR. HAMILL: You will find out more likely that that was a test case where they came in and that there was a conviction in the very same manner as the ordinance regulating the traffic on the Skyway was tested.

THE COURT: This isn't Justice Case's opinion. Where is the Justice Case opinion?

MR. STOFFER: That is 12 Miscellaneous.

THE COURT: May I be furnished with that?

MR. STOFFER: Yes, your Honor.

MR. FRAZER: That was the one, your Honor please, which relates not to the distribution of circulars to individuals, but throwing them in the areaways and putting them in letter boxes.

THE COURT: I assumed it was, but I just wondered how the test was made.

MR. FRAZER: It was made, I understand, in exactly the same way. There was an arrest made.

THE COURT: That is what I would suppose. I would like to see it.

Q. But there was another case, Mayor, of Coughlin v. Sullivan, wasn't there?

MR. HAMILL: You will find that that was the case where they were distributing in a store.

MR. FRAZER: No, I think not, in the Coughlin v. Sullivan case.

MR. MATTHEWS: The library has all of that, why not let us go on?

MR. FRAZER: Why not allow me to conduct my examination, Mr. Matthews?

MR. MATTHEWS: I allow.

Q. There was a case of Coughlin v. Sullivan in which there was an opinion given by Justice Minturn, you may recall, where there was a distribution of circulars criticizing the city government, and it was held in that case, as I recall it, that it was unlawful to interfere with that distribution; do you remember that?

MR. MATTHEWS: I object, if your Honor please, that is calling for a conclusion, and we don't know whether those are the facts or not. Counsel is trusting——

THE COURT: Will you get that? What is it?

MR. KAPLAN: I think it is 100 Atlantic. I will find it in a moment.

Q. Now, in this case they did take the matter up to court, didn't they?

A. What case?

Q. The case, the recent November 29th incident.

A. CIO?

Q. Yes.

A. Yes.

Q. They went to court?

A. The police courts?

Q. No, I mean to the higher court.

A. Yes.

Q. Now pending there on certiorari, isn't it?

A. Oh, no, that wasn't certiorari, before Justice Bodine. Didn't he render his decision on that case against us? We withdrew all our legal objections the moment Justice Hughes had rendered that decision.

Q. Well, the case did go up to the Supreme Court?

A. Yes.

THE COURT: There it is.

Q. Now, as a matter of fact, there was considerable violence that day on the part of the police, wasn't there, Mayor?

A. No.

Q. It has been so testified to.

A. No.

MR. MATTHEWS: You are shaking your head; that stenographer cannot see it.

A. I never heard of it.

Q. You say in your statement, "Nobody has complained of being beaten or even spoken to harshly." There were several witnesses; one of them used the picturesque expression "being hit in the short ribs."

A. Where?

Q. On November 29th.

A. On this morning in question?

Q. Yes, sir.

A. I never heard of it.

Q. And there were a number of others who testified to having been struck. Would you call that being gently used?

MR. MATTHEWS: I object. I don't see why he should be called upon to characterize testimony by other people. He does not know whether that is so or not.

MR. FRAZER: I am asking him to characterize his own statements whether they were accurate.

MR. MATTHEWS: He didn't make the statement that people were hit in the short ribs.

Q. No, but I am asking him whether in view of the fact of that testimony he would say that the statement which he made earlier was accurate that nobody was roughly treated; his exact words are "Nobody has complained of being beaten or even of being spoken to harshly."

MR. MATTHEWS: I object because there is testimony to that effect doesn't make it true or it doesn't make the Mayor's testimony untrue. The Mayor's opinion is

that there was nobody injured or hurt. Now, some fellow comes on here on this stand and says he was hit in the short ribs and Mr. Frazer wants to know "Does that change your statement any?" Why should he take the statement of that witness to change his statement?

Q. If those were the facts you would not say that that was gentle treatment would you?

A. Well, they are not the facts, counsel.

Q. The facts are in evidence and the Court will decide if they are true.

A. I don't believe this witness who was here.

Q. But assuming he told the truth——

MR. MATTHEWS: I object. You cannot assume that the witness told the truth; that is for the Court to decide.

THE COURT: Obviously it isn't then if that is true.

MR. FRAZER: Obviously the Court has decided.

MR. MATTHEWS: The Court has not decided.

MR. FRAZER: Oh, yes, the Court decided whether that was gentle treatment or not.

MR. MATTHEWS: I think he is more judicial than that.

THE COURT: I say if it was true that someone was hit in the short ribs that would not be gentle treatment, we all agree to that.

MR. MATTHEWS: That isn't the question before the Court. Well, I am glad to have the record as is.

Q. Now, Mr. Mayor, you have made statements that whether permits were to be granted depended upon the purposes for which the meetings were to be held.

A. Political meeting or public meeting?

Q. Public meetings. And referring again to my letter of December 23rd, P-13, I distinctly stated that the purpose

of the meeting for which I was applying for a permit "is to petition the Board of Commissioners of Jersey City to modify Jersey City's leaflet distribution ordinance and its ordinance on public meetings and to take appropriate action against intimidation by certain officals of your City, of owners of halls who, but for the fear of incurring official hostility, would be willing to rent their premises for meetings of the Hudson County Organizing Committee." Do you not consider that an appropriate purpose for a public meeting, to petition——

MR. MATTHEWS: Now, your Honor, I object to that, to petition the Jersey City Commissioners. The proper place to present a petition of that kind would be to go to a Commission meeting and petition it. So if Dean Frazer asks——

THE COURT: Dean Frazer asked if it was a proper purpose.

MR. MATTHEWS: Well, he read from the letter, which of course was a letter to make a record rather than a letter to the Commission.

MR. FRAZER: Why, certainly.

MR. MATTHEWS: He says the purpose of the meeting is to petition Jersey City to modify this ordinance. The proper place, as you know, would be at a Commission meeting.

THE COURT: You may answer.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly.)

(Sealed)

Q. Would you consider that a proper purpose?

A. You ask me, Counselor, that this application that you had directed to Commissioner Casey——

Q. Yes.

A. —or did you direct it to the City Commission, Casey and the others?

Q. I directed it to Commissioner Casey because the ordinance says that application shall be made to the Director of Public Safety.

A. Yes, yes.

Q. That was the proper place?

A. That is perfectly all right. The only thing I want to get plain, if you will remain here and help me with this, --that was a lengthy statement that you read to me. Will you read it again?

Q. I just want to let you look at it.

A. That is your letter. I want to answer your question just as you would like to have it answered, if I possibly can.

Now, do you say that this letter,—do I think this is justification for getting a permit, this letter?

Q. No, I am asking whether the purpose which is set forth in the letter——

A. There was justification for granting the permit?

Q. Was a proper purpose for an open meeting, a public meeting?

A. Yes, it was a proper purpose, but just now, Counselor, wait, that is a lengthy statement—I stated here prior on my last visit here that there was no applications ever denied for public meetings in Jersey City until this uprising and this disorder and this disturbance took place. After that we realized then that we had to be careful about the granting of permits, and it was then that we discontinued granting permits because of this trouble that was between the City of Jersey City and the CIO.

Q. Now, what uprising can you refer to except the coming of forty CIO distributors or two hundred, if you wish, on November 29th to distribute circulars, what uprising was there?

A. If you read the public press, at the time that Mr. Carney had directed this group to come to Jersey City, as I stated earlier, not today, on my previous visit here, that as far as the CIO was concerned, that discontinued in a day or two, that was subsided, but then come Roger Baldwin, Garfield Hays, Mr. Ernst and all the Civil Liberties and all

the radical groups started to direct all their attention into Jersey City.

Q. Well, now, was there any uprising?

A. Counselor, that was it, we had a wide publicity campaign on that, that is, not Jersey City but the papers took it upon themselves because of the attitude, of the threats of court proceedings and all sorts of litigations that was threatened against the officials, myself and the officials, and naturally the feeling that had developed amongst the people of Jersey City was not a healthy feeling, and the result was that the officials, and we still think that it is very bad judgment even now to hold meetings with the temperament of the people as they are today.

Q. So that you have now adopted a policy in Jersey City of suppressing all public meetings?

A. No, no, no, no. Don't have me answer that that way.

Q. Well, I would like to have your view on that.

A. We have not adopted a policy,—we have adopted a policy to safeguard the lives and properties of our people because of the disorder that is apt to take place and the violence that is apt to take place. Naturally we must safeguard our people.

Q. I want to ask you once more whether except for the episode on November 29, 1937, there was any disorder indicated up to the time that I wrote my letter——

MR. MATTHEWS: I object.

Q. —and if so, what that disorder was.

MR. MATTHEWS: I object. The Mayor has testified that he was not waiting for riot to occur, that his people in Jersey City were offended at what was happening, were afraid that something would happen, and that therefore he adopted a policy of carefulness, and Mr. Frazer is reading one sentence out of a letter and he doesn't give him the whole letter, which would indicate that the purpose of the meeting was not to have the ordinance modified or anything of that sort, the purpose

of the meeting was to bring in speakers into Jersey City who were the very subversive elements that the Mayor has said were causing trouble in Jersey City. The next paragraph in the letter, Charlie prompts me, —perhaps over your shoulder——

MR. FRAZER: Oh, I am quite used to that.

MR. MATTHEWS: —indicates that that is so.

THE COURT: Do you want another paragraph read?

MR. MATTHEWS: No, I don't want anything except to object to counsel's statement that Mayor Hague had nothing but the episode of November 29th to warrant him in refusing the permit.

MR. FRAZER: I will ask Mrs. Bergen to read my question.

(Question repeated by the reporter.)

MR. MATTHEWS: I objected because the Mayor had previously testified, while your Honor was in a bit of inattention, that he had assumed by reason of what had happened before the statements of Carney, Roger Baldwin, and so forth, that his people were in danger.

THE COURT: I heard that; I heard that, Mr. Matthews.

MR. MATTHEWS: I beg your pardon, sir.

THE COURT: You may answer.

MR. MATTHEWS: I thought I was prompting you.

Q. Will you answer that, Mayor, whether there were any uprisings?

A. Prior to Mr. Carney's entering Jersey City or later?

Q. No, after what you have called the uprising on November 29th; were there any uprisings in Jersey City, up to the time I sent my letter on December 23d?

A. What time elapsed, Counselor? Will you enlighten me? What time elapsed from the invasion of Carney's

group and his public statement and your letter? Would you give me that——.

Q. Roughly four weeks; from the 29th of November to the 23d of December.

A. There was a vast—you see, there was a great deal of time that had elapsed. You see, your letter arrived, I would say, Counselor, in the center of all this disturbance.

Q. Well, what was the disturbance after the November 29th episode? There was an orderly application to the Court for the review of the work of your city judge. Was there anything else that was done by the CIO?

A. Yes, yes, yes. The CIO proceeded immediately to start to make a request of Commissioner Casey for public meetings and advertised Roger Baldwin, Garfield Hays, and all these undesirables, to come in there and make these public addresses. So that controversy was going on between the officials and the leaders of the CIO and the leaders of the Civil Liberties. There was quite a lot of disorder, quite a lot of statements, quite a lot of threats of litigations and invasion—in free speech and free press.

Q. Well, what ones? I would like to have my attention directed to some one of them.

A. Some one what?

Q. Of these quite a lot of things that you said had elapsed. You haven't specifically stated one.

A. Well, every day.

Q. What?

A. Every day there was nothing but flare heads in the public press of what Baldwin was going to do to the officials of Jersey City, and, why, even Morris Ernest was on the air at least three or four times during that period, making nation-wide hook-ups, and attacking the officials of Jersey City, threatening them with all types of court proceedings, prior to your application being received.

Q. Now this attitude of unrest, you said, still persists in Jersey City?

A. Oh, very strongly, very strongly.

Q. And on account of that the Commission has determined that there shall be no public meetings granted to any one, no permits?

A. I wouldn't say anyone. I would say those who are associated with these elements that's responsible for all this disorder.

Q. So that the permits will be denied only to persons who are associated with the plaintiffs in this case?

A. Can your clients or can your associates show me one application from the CIO, Counselor, where they requested a public meeting that was denied, or where there was an application prior to this uprising?

Q. The uprising is the episode of the 29th of November, isn't it?

A. Yes; but show me one application prior to that. Can you show me where anyone interfered with the CIO in any meeting or any business that they wished to transact? They had three headquarters. Nobody bothered them. They had public meetings in big halls there. Nobody molested them, nobody interfered with them. There was nothing prior to this trouble with Carney's statement. There was never an application denied by the City officials. This all occurred after this uprising that took place, as you say, the 29th. I am not exactly familiar with the date.

Q. The headquarters which they had in Jersey City were under constant surveillance, were they not?

A. No, sir.

Q. They were not?

A. That's untrue. I read that in the paper. That's untrue.

Q. Now the men for whom I asked permits, Mayor, were Congressman Jerry O'Connell.

A. What?

Q. The men for whom I asked pemits, Mr. Matthews objected because I had not given you the names although I had showed you the letter—Congressman Jerry O'Connell and Roger Baldwin, William J. Carney, Al Barkin, Sam Macri and John Kiesler—they were all objectionable?

A. Well, O'Connell was objectionable, Arthur Baldwin was objectionable.

Q. Roger Baldwin, you mean.

A. Roger Baldwin. I am thinking of Arthur Baldwin, the noted lawyer over in New York. Roger Baldwin was objectionable. Now I don't recognize the other names there.

Q. William J. Carney.

A. Well, at that time he probably would be objectionable because he started all the trouble.

Q. He wasn't present at that episode on the 29th of November, was he?

A. No, he didn't—he didn't appear.

Q. What about Al Barkin, was he——

A. I don't know the gentleman.

Q. Sam Macri, he was an organizer.

A. Is that the man that was on the witness stand?

Q. That was the one that was beaten up.

A. McCrae? Is that the way you pronounce it? What is the proper pronunciation?

Q. Macri; I think he is an Italian.

A. Oh, I only know him by reputation. He is located in Jersey City.

Q. Yes.

A. I don't know him. I only know him by reputation.

Q. Would there have been any objection to his making a speech?

A. At that time, possibly, because of his activities in these flare-ups that we had there.

Q. In short, practically all of these were, on account of their association with the CIO, or would have been objectionable?

A. No, no, there was nobody objectionable, Counselor, prior to this trouble. We never—as a matter of fact, we went along in a peaceful, orderly manner, ever since I have been in control of the government. We have never had any trouble; and we have never denied a permit in Jersey City.

Now we have had a very disturbing element in Jersey City for years, and that man and his group has never been denied one permit in Jersey City by the city officials.

Q. Well now, Mayor, you did know that prior to November 29th, 1937 and as a sequel to the organization efforts which were started on that day by the distribution, the CIO had hired for a meeting the People's Center for December third?

A. People's Palace?

Q. People's Center, I think, isn't it. Do you know the hall called the People's Center?

A. Yes, I know it.

Q. You knew that that had been hired?

A. No.

Q. Well, if I assure you that it had been, and it was so testified——

A. If you had it had, that is perfectly all right.

Q. And the meeting in the hall, the deposit, the rental of the hall, was cancelled, and it was impossible to obtain a hall on that date. Do you know anything about that?

A. You see, that hall is conducted by some religious order, Counselor, and they are very strict, and I could assume that if they read in the public paper that there was somewhat or any disturbance that would surround this meeting, they would readily cancel it, because it is a very high class hall and it is a religious hall.

Q. The People's Palace?

A. Yes. I think if the records, if you examine the records, I think the CIO had several meetings in that Center some years back.

Q. They had had up to this time.

A. Yes. They had held meetings there.

Q. It was so testified to, right up to this time?

A. Yes.

Q. Right up to this time they had had meetings in that hall?

A. Yes.

Q. And on December third they had arranged for a large ball or something of that kind there, and had made all their arrangements, and then the hall was withdrawn from them.

A. No, the only—I was walking along Bergen Avenue with Mr. Malone, my deputy, and the superintendent of the People's Palace walked across the street and stopped me and said to me that Jeff Burkitt was there that afternoon, representing the CIO, and that he was very, very abusive, that he insisted that that hall be rented to him, and this man says, no, that he was sorry, that he couldn't allow Burkitt or any disturbance to take place in his hall. Now that's the only time I ever heard anything about that.

Q. Now, Mayor, as you said, prior to December 3d they had quite regularly been meeting in this particular hall?

A. Only as my recollection recalls. I don't know the dates. I remember there was nobody ever stopped.

Q. No; and there was no disorder in any of those meetings, was there?

A. No.

Q. What?

A. No; they are used to that.

Q. Why did you suppose there was going to be such disorder on December 3d that it would be necessary that they should not have the hall?

A. Only the class of speakers that they had advertised to address them. That was Roger Baldwin and these other groups of radical speakers.

Q. At this meeting of December third?

A. I don't know. I am only say——

Q. Aren't you referring now to my letter?

A. No, no; I am only referring to this: to the uprising, to the beginning of this disorder, that took place in Jersey City. Prior to that there was never an objection. Since that disorder, then the objections was filed, and we thought that after the veterans and after all the civic bodies and everybody had filed their objections, that it was due time for us to suppress these meetings for the present.

Q. And so they were suppressed?

A. (The witness nodded.)

Q. And still are?

A. Yes, sir.

Q. And when we were discussing this statement of Brophy about the rubber hose, you said it was taken as a joke.

A. Well, from the papers, the newspapers' accounts, as I say, Counselor, when you are in a meeting that's called to order for a purpose of that character, naturally you are going to have men who express themselves that ordinarily would never make those assertions.

Q. And——

A. We allow for that.

Q. Yes, I understand that. And the administration did indicate its displeasure of any such thing?

A. Commissioner Casey immediately was interviewed by one of the men who is present here, and he denied it, said that he was sorry that the assertion, the statement, was ever made, and that there was no truth in it; that he would see that it was not carried out.

Q. Now, if you remember in my examination the other day of you, I asked you this question:

> "I say do you think you could have prevailed upon the veterans to have been a little less aggressive if you had asked them to do so?"

And your answer was:

> "Well, I wasn't desirous of asking them that."

A. Yes, sir.

Q. Now, why were you not desirous of asking them to be less aggressive?

A. Because I felt that for the safeguarding of the people's lives in the city that I represented, that I was not desirous of asking them to withhold any objections or any protests, because I felt that it was justified, and that the conditions that surrounded their action was really in keep-

ing with their National Convention in the City of New York, where they came out and publicly declared, openly, about radicalism and Communism.

Q. Don't you think they might have come down, as Mr. Matthews suggested, the CIO, to your commission meeting and asked you not to permit these people to come in, rather than to come in hordes?

A. Well, if you recall, Counselor, your letter or the applications would be received, like today, desiring three days from now. Our meetings is only every two weeks, so it would be impossible for them to appear there.

Q. I see.

A. In some instances.

Q. That would probably be also true of my letter, if I were applying——

A. Oh yes, oh yes; if you——

Q. In a week or so?

A. If you wanted official action before the commission, yes.

Q. There was no permit for those meetings of the veteran demonstration, was there?

A. No, there is no permit for any indoor meeting.

Q. No, I mean afterwards; they had a demonstration, didn't they, a march or something of that kind?

A. Oh, they appeared as citizens; they appeared as private citizens on that assemblage that they had at the Square. They only appeared with forty or fifty thousand others.

Q. That was not an assemblage; that was just private citizens?

A. Well, I don't know what you would call it.

Q. But there was no permit for that assemblage, was there?

A. No, there was no necessity for a permit there.

Q. But there were some seven men, something like that, out of a group of forty who were distributing circulars, on November 29th, who were arrested for unlawful assembly; that's true, isn't it?

MR. MATTHEWS: I object, if your Honor please. That is not the testimony. Seven of the forty that were arrested were not arrested for distributing circulars but for creating disorder.

A. No, that is untrue.

THE COURT: They were arrested for both, as a matter of fact.

MR. MATTHEWS: What?

THE COURT: They were arrested for both matters, as I understood it.

MR. MATTHEWS: For disorder.

MR. FRAZER: No.

THE COURT: For disorderly assemblage, that is what the testimony was.

MR. FRAZER: Unlawful assemblage was the charge.

MR. MATTHEWS: I don't care what the charge was, we are talking about what the testimony is, what the Mayor has already said.

MR. FRAZER: I am not speaking of the Mayor's testimony.

THE COURT: Someone else's testimony.

MR. MATTHEWS: Then let him be confronted with the testimony of another and ask him if that is true—or not if it is true; if he agrees with that. He can't characterize it as true or false.

Q. Now you remember saying on Friday that your fight at the present time was not with the CIO; "That's why I charged the CIO that if these men represent it they surely must be a radical group," having referred to Mr. Ernst and a few of the others—"they surely must have Red leanings, they must be leaning in the Red direction."

What is a Red?

A. A Red?

Q. What is a Red?

A. You mean my interpretation of a Red?

Q. Yes.

A. A Red is a Communist. I interpret—I gave you my interpretation of a Communist.

Q. They are the same thing?

A. The same thing.

Q. Synonymous?

A. Yes.

Q. Now, all of these organizations you say, the Civil Liberties and things which are sponsored, the Workers Defense League and those, are all Red or Communist?

A. They are all Red and Communist, both.

Q. Now, did the American Civil Liberties Union ever hold any meetings in Jersey City before this?

A. I do not know, Counselor, but if they made application, that is—I feel they never held an open-air meeting.

Q. Did they ever hold any other kinds of meetings?

A. I think so, in public halls I think you will find, I am not sure; but they never had any request before the commission which was acted on officially; we never had that.

Q. Did Mr. Roger Baldwin ever speak in Jersey City?

A. I think he did.

Q. And did Mr. Norman Thomas ever speak in Jersey City?

A. Yes, sir.

Q. Were any of those appearances attended by any disorder or disturbance?

A. I don't think so. That's indoors, now, Counselor.

Q. Yes.

A. That was not open, public—open meetings, on the streets; that's indoors. It is an easy matter to regulate an indoor meeting.

Q. Did you ever give any permits to the Communist Party as such for outdoor meetings?

A. No.

Q. Are you sure of that, Mayor?

A. I am not sure.

Q. I just asked you——

A. When I say that, I don't know. As I said to you, Counselor, I look the records over and I have been familiar with the records for the last twenty years, because all these matters were there is any disputes take place, they are brought before the attention of the official body. I don't remember denying anyone a permit.

Q. Well now, I just want to call your attention to something. I show you Exhibit P-10, which was produced by Commissioner Casey. I don't want to mislead you.

A. No, that's all right.

Q. And I show you, starting in here, a list, July 22d, 1932; Socialist Party, Communist Party, Socialist Party, Communist Party, Socialist Party, Socialist Party, Communist Party, Communist Party—there is no use of reading a large number of them.

A. No, no.

Q. Just to show that permits had been granted to the party which Mr. Thomas represents and even to the Communists.

A. That's exactly, just exactly what I have stated, Counselor, that there have been three permits denied prior to this uprising. Now the records show there, which I have not examined, that the Communist Party and the Socialist Party was granted permits, every request that they ever made to Jersey City. Now, as I still say and repeat, everything was harmonious in Jersey City. There was no disorder, no trouble, no misunderstandings, until this statement of Carney that he was to invade Jersey City and just rip us apart; and I think we were justified in being disturbed and being unduly alarmed—alarmed sufficiently to safeguard the people.

Q. Now, the only act of disturbance for which the CIO was in any way responsible or for which the Civil Liberties

Union was in any way responsible—oh, I won't say that.

Was the Civil Liberties Union responsible for any disorder in Jersey City since November 29, 1937?

A. In what respect, Counselor, are you referring to?

Q. Have they attempted any public meetings against your denial of a permit?

A. No, no, they have not.

Q. Has the CIO?

A. Other than their application——

Q. They both made applications, did they not?

A. Well, I anticipate that Jerry O'Connell and Bernard was representing the CIO when they defied everybody.

Q. Well, you assumed that.

A. Well, they stated that, Counselor. That's their public statement.

Q. But you know of no application either by the Civil Liberties Union, subsequent to these of December, or by the CIO, for a public meeting, do you?

A. Since our trouble?

Q. Yes, since November 29th?

A. No, no.

Q. And since the applications we made in December?

A. Yes, yes, the CIO made an application and it was denied, you will recall.

Q. Yes.

A. And they advertised Baldwin and numerous others.

Q. Yes, and that application was denied?

A. Yes.

Q. And there was no attempt made to hold that meeting, was there?

A. Oh, no, no. Then there was the application for Jerry O'Connell and Bernard, and that was denied.

Q. And there was no attempt made to hold that meeting?

A. Oh, yes, there was quite an attempt made.

Q. Wasn't it a subsequent meeting when Mr. Bernard and Mr. O'Connell said they were coming in?

A. No.

Q. They didn't come?

A. Their application was received and they were scheduled to talk, and it was denied, and they said permit or no permit they are coming in here.

Now, Jerry O'Connell in Washington, if the papers is quoted properly, stated that he wasn't even going to give us the honor of making an application for a permit. He was going to come in and talk whether we liked it or whether we did not like it.

Q. Now that was the first so-called O'Connell meeting?

A. No, that was the second, that was the second.

Q. The first, the permit had been denied?

A. Yes.

Q. And no speech or no attempt to make a speech had been made?

A. Well, he didn't appear.

Q. Mr. Norman Thomas had been in Jersey City on many occasions?

A. Oh,——

Q. Without disorder of any kind, is that true?

A. Never had any trouble.

Q. And in all of these years prior to November 29, 1937, there had been no violence or disturbance in public meetings of either the Communist or the Socialist Party, that's right, isn't it?

A. No, no, let me answer that Counsel. As the record shows, that Commissioner Casey produced here, that I just examined, that clearly expresses to the country Mayor Hague's attitude on free speech.

Mayor Hague has never denied free speech, as the record shows, Communists, Socialists, every application that was ever made to the City of Jersey City was granted. That record shows that, Counselor, Now, I wasn't familiar with that record. I had always maintained that we had never opposed free speech and I would like to say to the country that the evidence that you just produced clearly

demonstrated that Mayor Hague never opposed free speech. The only time that free speech was ever questioned has been since this trouble and this disorder.

Q. Well, now, there is perhaps one other instance there.

A. And I think it is time, Counselor, that public officials should inject themselves in when there is disorder and bloodshed in danger. Then I think it is time free speech ought to be considered in its proper manner to safeguard the city I represent and its people.

Q. There was a suit brought against the City of Jersey City at the instance of the Hudson County Committee of the Communist Party and one Jay Anyon.

A. Is that before Vice-Chancellor Fielder?

Q. That was before Vice-Chancellor Fielder.

MR. MATTHEWS: When was it, Spaulding, please?

MR. FRAZER: Well, the opinion was rendered on January 19, 1937.

THE COURT: There is the opinion.

MR. MATTHEWS: I am familiar with the opinion; I just forgot the date.

Q. Now, at that time, in November, 1936, there was some distributing of ordinances, was there not?

MR. MATTHEWS: Ordinances, did you say?

Q. Of circulars, excuse me. A pamphlet entitled "Ford strike solidarity meeting was attempted." Do you remember that?

A. No, I do not.

Q. Now, on November the 17th some men came and asked for a permit to hold a meeting on November 21st at the Central Hall in Jersey City.

MR. HERSHENSTEIN: What year?

MR. FRAZER: 1936.

Q. Do you remember that?

A. No, I do not.

Q. Well, you remember generally the facts in this case?

A. I remember the Fielder case.

Q. That is what I am referring to. These are copies of the affidavits filed by the city in that cause. Do you remember that there was an application made for a permit to hold the meeting in that particular instance to the police, to Chief Walsh in fact?

A. Was that an open air meeting?

Q. No, that was a meeting in a hall.

A. I think the circumstances surrounding that particular case, Counselor, is this, as near as I can remember, that the Communist Party, the men representing the Communists, appeared at this hall and engaged the hall and put a deposit of $5 on it. At that time they did not inform who they represented; they said they represented some people that wanted to hold a meeting or some little affair or entertainment of some sort, and my information, if it is correct, is that this proprietor was somewhat disturbed after they left and made some inquiries as to who this group was, and I believe he ascertained, how I don't know, but I think he wrote them and returned their $5 and said, "I cannot rent this hall to the Communists" or whatever it was, and they took the matter up.

Q. Unless you have a permit, wasn't that what he said?

A. No—well, if he stated that that was untrue.

Q. Well, now, at that time you did have an ordinance on the books of Jersey City which said in effect that no hallowner should rent his hall for any meeting at which the destruction of the Government and so on would be discussed unless be obtained a permit from the police; that's right, is it?

A. I don't know.

Q. Well, there was such an ordinance?

A. I think there was.

THE COURT: It is in the bill of complaint. I think we had it the other day.

A. I think there is one.

MR. FRAZER: Yes, it is in the bill of complaint, and Vice-Chancellor Fielder's opinion refers to it.

MR. HERSHENSTEIN: The 1920 ordinance.

Q. Yes. This is rather small print, Mr. Mayor, but here is the ordinance: "No person, firm or corporation, owning" —may I read it for you?

A. Yes.

Q. "—owning, maintaining, operating, leasing or renting any hall, auditorium, room or other place for the holding of public meetings shall rent, lease, hire or permit the use thereof without a permit therefor first obtained from the Chief of Police for any such meeting, whereat any such person shall speak upon the subject of obstructing the Government of the United States or any state thereof, or advocating the abolition, overthrow or change of the Government of the United States, or any such state, by any means, method or activity" and so on.

MR. MATTHEWS: Other than those now allowed by law. You should continue.

MR. FRAZER: I am perfectly willing. I thought I would give him the gist of it. Go ahead, Sir John.

MR. MATTHEWS: "—or whereat the use of force or violence against the Government of the United States or any such state shall be advocated." That is the end of it.

MR. FRAZER: I am glad to have it all. My eyes are a little weak in this fine print.

MR. MATTHEWS: I am glad to assist.

Q. The object of that ordinance, Mayor, was to prevent the meetings under supervision of those who advanced doctrines which you considered to be the doctrines of the Communist Party.

MR. MATTHEWS: I object; that calls for an interpretation of the ordinance. That isn't so.

MR. FRAZER: No, I want to know whether those meeting which were prohibited were essentially those which you testified to be your conception of Communism.

A. Note the date of the adoption, right after the war.
Q. I am not criticising it.
A. No, I am only saying.

MR. MATTHEWS: Here it is right there, the purpose.

MR. FRAZER: Very small print.

MR. MATTHEWS: Yes, but big enough for his eyes though, that one. The purposes are right there in it, Mr. Mayor.

Q. So it was proper when the hallowner ascertained that this was a Communist Party meeting to insist upon the obtaining of a permit, wasn't it?

A. Yes.

Q. And then the application was made for the permit and the permit denied by the police?

A. I don't know whether the permit—the application was made to the police; my recollection was that there was no discussion with the police on that.

Q. Well, I will show you a copy of Harry Walsh who is——

A. Chief.

Q. —Chief, isn't he? This is his affidavit.

A. Did he say the application was made?

Q. Yes, he says here——

A. All right.

Q. "Finally the spokesman of this group said, 'Do we get a permit?' and I said, 'I will not give you a permit.'" Now, Chief Walsh proceeds then to list reasons subsequently upon which he stated a permit might not be granted,

although apparently he did not say then, from his affidavit, at the time. The permit among other things was denied because the building was not safe for such a meeting; the building was the Central Hall at 574 Newark Avenue.

A. That was their defense, I presume.

Q. That was their defense. The building is still used for halls?

A. Yes.

Q. They have pretty good sized assemblages there, don't they, Mayor?

A. Yes, "any port in a storm," Counselor.

Q. Now, that was a case where there was a suppression, wasn't there?

A. Yes.

Q. I just wanted to call it to your attention.

A. Yes, that is one particular case.

Q. And the Vice-Chancellor in that case made this statement: "The real objection of the police authorities to meeting under the auspices of complainant association is that they do not regard the principles of the Communist Party with favor and they fear that if complainants are allowed to hold a meeting that party's political principles will be expounded and urged and that disorder and even riots may follow." That is a correct statement by the Vice-Chancellor of the police's position, isn't it?

A. Yes.

Q. And your objection to the activities of the plaintiffs are based upon the fact that certain important members of those bodies are, in your opinion, Communists?

A. Yes.

MR. MATTHEWS: Now, if your Honor please, that question is not a relevant question to this issue.

THE COURT: I thought it was. You said plaintiffs, didn't you?

MR. FRAZER: Yes.

THE COURT: You may answer.

MR. FRAZER: He has answered; he said yes.

THE COURT: We will adjourn now for ten minutes.

(A ten-minute recess was here taken.)

Q. Now, Vice-Chancellor Fielder, Mayor, going on with this case, said: "The Constitution of this State guarantees to every person the right to freely speak, write and publish his views on all subjects, being responsible for the abuse of that right."

A. That is his opinion.

Q. Yes. Well, you agree with that, don't you?

A. If that is the law, yes.

Q. "This means freedom to express publicly views with which we disagree as well as those which have our approval."

A. Well, of course, he is referring, I presume, to expression publicly of something that is lawful, something that is not advocating the overthrow of our government.

Q. Well, don't you understand that the Communist Party advocates that, or do you?

A. Yes, yes. That question wasn't before Vice-Chancellor Fielder, Counselor, the overthrow of our Government. The question before him was whether or not they had a right to meet. They had not met yet.

Q. The complainant was the Hudson County Committee of the Communist Party.

MR. MATTHEWS: Yes, but that is obiter dictum on the part of the Judge. That is not dispositive of the issue before Vice-Chancellor Fielder. That is one of those peregrinations into the law that we take when we write opinions.

MR. FRAZER: Well, we will just see, Mr. Matthews, whether that is so.

Q. "There is no evidence before me that plaintiffs have held any meeting in this county at which the law has

been violated or at which disorder or disturbance have occurred. The police have no right to assume that complainants will not, under any circumstances, hold a meeting without making unlawful attacks on the Government." In denying permits to persons who you believe are associated with the Communist Party, do you assume the right to judge in advance whether there will be unlawful attacks made on the Government?

MR. MATTHEWS: I object to that question, your Honor, please. He is just trying use Vice-Chancellor Fielder's opinion as a basis for testimony. Mayor Hague has testified that the reason he refused these permits was because of riot and bloodshed that was threatened. Now, then, in the issue there, the issue in Vice-Chancellor Fielder's case was that the permit was refused. He says they have no right to suppose, but in this instance here, as we will show, the Baldwin statements and the Fish Committee were before the Mayor.

(Question repeated by the reporter.)

THE COURT: Read the last part of the question.

(The last part of the question repeated by the reporter.)

THE COURT: You may have an exception.

(Defendants' counsel prays an exception, which is hereby allowed and sealed accordingly.) (Sealed)

MR. MATTHEWS: Well, the reason for the objection is this, that he is seeking to use Vice-Chancellor Fielder's opinion.

THE COURT: No, I left out the Vice-Chancellor's opinion.

MR. MATTHEWS: But that is the basis of the question. He is saying he doesn't assume anything. He had these creatures before him, Baldwin, et al.

THE COURT: You may answer.

A. You see you are selecting a case out of probably ten thousand cases. How this case found its way into court I do not know but I think it is rather unfair to judge the City Commission or officials on this particular case.

Q. Well, the case came into court, Mayor, because there was a denial to a committee of the Communists of the right to hold a meeting.

A. Of course, you have got to remember that is an indoor meeting also, that is not an open air meeting, and that is prior, long before these disturbances. That is at a time that disturbance was going on in other states all over. The Communists was criticised then as being the instigator of all this violence and disturbance. I presume that was the reason for the objection.

Q. Well, now, this opinion was filed January 19, 1937. That was only some nine or ten months before——

MR. MATTHEWS: The case was tried before that, wasn't it, Mr. Frazer, in November?

MR. FRAZER: Yes, it was started a year before, November, 1936. That is a year before.

THE WITNESS: He rendered from the bench, he informed us from the bench, the lawyers for the city, six or seven months before the opinion was filed.

Q. The Vice-Chancellor says, "It is also the duty of the police to suppress by arrest, if necessary, persons who may express violent disagreement with what may be said at such meetings rather than punish those who are threatened with attack." Do you think that in the removal of Mr. Thomas from Journal Square in April your police were protecting him from expression of his views?

MR. MATTHEWS: He has already testified that way.

A. That is a vast difference, Counselor. In this case you are referring to now about an orderly meeting, as they

charge, within doors when there was no disorder, no uprising or no dangers of violence; when Mr. Thomas entered the city it was in very bad condition. That was as far as the feeling of the people was concerned.

Q. What caused that feeling?

A. Just what we are discussing here, Counsel, which you are trying to restrain us from, was the CIO and Civil Liberties and all the Reds coming in there creating this disorder.

Q. Do you think the Reds have no right to express their views in Jersey City?

A. I think the Reds have no right to express their views in Jersey City if their intention is the overthrowing of our Government and the destruction of our American Government—no, they have no right because they are not American citizens and they are undesirables and they should be driven out of this country, not alone the city.

Q. Or put in a concentration camp in Alaska?

A. And you believe as I do, too.

Q. Thank you, Mayor.

Q. Now in this period of unrest, as you say, had you, as the head of the city government, called upon the people of Jersey City to behave in a peaceful and orderly manner on the coming of Norman Thomas into your city as he had done on other occasions, do you not sincerely believe that there would have been peace there instead of riot?

A. Well, I, as you note, I have made no statements at all during that period, because I was—in the first place, I was misquoted so frequently that I thought it would be better for me to remain silent and perform my duties as I seen it. I didn't issue any statement. You say that if I did, it would disperse all this feeling of unrest?

Q. Don't you think it would, if your views had been known?

A. I do not think so, Counselor.

Q. If you had said at the end of December, when the veterans, so called, had had their meetings, "I disapprove

of this demonstration; let us have order and quiet in Jersey City," don't you think you would have had order and quiet?

MR. MATTHEWS: I object, your Honor. Why should he disapprove of what the veterans did?

THE COURT: You may answer.

A. No, I do not think so, Counselor. I do not think that if I issued a statement, from the manner in which the public press had been running these stories and enlightening the people on just what was taking place, I don't think so.

Q. Well now, you remember what you testified to on Friday, that a movement of this character, particularly of such great importance, that one who is the official head—his principal desire to have co-operation of the whole community. "The people in general on every occasion that I have ever called upon the people of our city, they have responded."

A. Well, those are patrictic——

Q. Well——

A. Anything that was concerning the city, but this is a question that the people feel that they are being imposed upon, that they have singled out Jersey City as a city out of all the other cities in the country to set up a campaign of disorder, a campaign of discontentment. The people's minds today, as I say, from the newspaper publications, are not in that mood.

Q. Don't you think it would be patriotic on the part of the city of Jersey City, the citizens of Jersey City, if, in response to your request that they be quiet, they were quiet?

A. I think they were very patriotic for 25 years under me when no permits was denied and nobody was deprived of their free speech.

Q. No one during that time had any disturbance?

A. No, never.

Q. Certainly not the Red element?

A. Well, we never treated the Red element with any serious consideration. They come in and they went out about their business, and the people of Jersey City wasn't interested, apparently, and the result was that there was no disputes, no trouble, none in the least.

Q. Now you said during this period you had made no statements because you have been misquoted.

A. That's during this controversy.

Q. Yes. But it is true, I think you already said, that you didn't have to make statements, that people knew your views.

A. They know I am for law and order, Counselor.

Q. Yes.

A. They know that the city has been governed for 25 years along that line of law and order. We have got a city that's a moral, clean city. We have never had any occasion to appeal to the people for anything other than some patriotic movement or some question that's a civic public question.

Q. Yes; but I mean in the matter of policy, the city administration policy; I think you said that the hall owners didn't have to be told, they knew what the policy was.

A. I said on that statement, if you remember, that men who has been associated with the city government for twenty-five or thirty years, and who is familiar with the policies of the present commission, that when they read in the newspapers of the objections that the city officials is raising against any groups presenting themselves to the city, that's all they need; they don't run in different circles, from what the governing body's wish.

Q. No; and the fact that you attended these meetings of veterans and others at the armory gatherings indicated the official approval——

A. Yes.

Q. —of the administration upon the kind of demonstration which those people were indulging in, didn't it?

A. I only attended one meeting, now. That was the big armory public meeting.

Q. You attended one of the Chamber of Commerce about the same time?

A. That's the one; that's the one.

Q. No, I mean a special, a smaller dinner of the Chamber of Commerce; didn't you?

A. A dinner, yes.

Q. Yes. Well it was a large banquet?

A. Yes.

Q. Several hundred people there, weren't there?

A. Oh, five—five or six hundred.

Q. Five or six hundred. And you attended that, and at that meeting you spoke?

A. Yes.

Q. And you did at that meeting give approval in a general way to the kind of demonstrations which the citizens of Jersey City were then indulging in.

A. I spoke to the people through the radio. I told them just my views and how I felt about it, and what was good for the welfare of the city.

Q. Now, if at the Chamber of Commerce dinner, let us say, you had thanked them for their invitation to you and their effort to support you, and had there said, "But, gentlemen, we don't need demonstration in support, and I ask you that we have no more such demonstration, and that Jersey City return to its peaceful habit of the past," don" you think that they would have followed that suggestion?

MR. MATTHEWS: I object to that question.

A. There is no occasion for that.

MR. MATTHEWS: He is asking the Mayor, does he think that the veterans, who are aroused because of the press, to protest against this unlawfulness, if he told them not to—why, that would be unpatriotic on his part; to tell a veteran not to protest against that.

THE COURT: He has answered the question.

Q. I understand the Court said you may answer it.

THE COURT: He has answered the question, is what I said.

MR. MATTHEWS: I didn't hear him answer.

MR. FRAZER: I didn't hear him answer either.

THE COURT: It is on the record.

MR. FRAZER: Will you read it, please?

(Answer read by the reporter.)

MR. MATTHEWS: There was no occasion for that.

Q. Don't you think it was your duty to do that?

A. No.

Q. You don't?

A. (The witness shook his head.) I think the duty of a Mayor, Counselor, is to from his own observation, ascertain for himself just what's beneficial to the people of the community in which he presides over. I did not think that that was an opportune time for me to disagree with the general feeling of the entire city, because I thought I would be deceiving them; I wouldn't be telling the truth.

Q. Well, Mayor, don't you think a great deal of this demonstration was a display of loyalty to what they considered your views?

A. No, no, no, no; they are patriotic; they are real, true Americans.

Q. But you did thank them——

A. Oh yes, yes.

Q. For their support of your views, didn't you?

A. Yes, sir.

Q. So that you in effect said "Your demonstration here is just what I like?"

A. No, I didn't say it in that manner.

Q. No, no, no. You didn't use those words, but that's what they gathered from it, don't you think?

MR. MATTHEWS: I object to what they gathered. How does he know what was in the minds of the veterans or the people there?

Q. Don't you consider it the duty of your police to protect persons who desire publicly to express views which are unpopular to the majority of the people of Jersey City?

MR. MATTHEWS: Now, if your Honor please, may I object to that? That is taking another court opinion and trying to take an isolated piece out of it.

THE COURT: It seems to me to be more or less the issue in this case, Mr. Matthews.

MR. MATTHEWS: The issue in this case is and nobody can misinterpret it, whether or not it is his right to stop these anarchists, these Communists, the Baldwins, the Ernsts, and the rest, from coming in and advocating riot and bloodshed.

THE COURT: You may answer the question.

MR. MATTHEWS: I object to the question.

THE COURT: You may have an exception.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

A. Will you repeat that, Counselor?

MR. MATTHEWS: Thank you for the exception, your Honor.

A. Will you repeat that, Counselor?

Q. Perhaps I can re-state it more quickly. Don't you consider it the duty of your police to protect, in Jersey City, those persons who wish publicly to express views unpopular to the majority of the citizens of Jersey City?

MR. MATTHEWS: I object to that question until "unpopular" is defined for the witness, what unpopular views are. That opinion uses "unpopular."

MR. FRAZER: I will withdraw that question. Will you read the other one, the one the Court has already ruled on?

(Question read by the reporter.)

MR. MATTHEWS: It being the same question, I object to the word "unpopular" unless it is defined.

MR. FRAZER: You have already objected and the Court has ruled.

MR. MATTHEWS: No, the Court ruled on the general objection to the question.

THE COURT: Substitute "meet with disapproval of."

MR. FRAZER: Very well, I am perfectly willing to accept your Honor's substitution.

MR. MATTHEWS: Your Honor will allow me an exception to your substitution, please?

THE COURT: Yes.

(Which exception is hereby allowed and sealed accordingly.)

(Seal)

A. Do I answer?

Q. Yes, please.

A. Your question is, do I—should I suppress the police from interfering with anyone who may deliver a public address which is unpopular? Is that the sense of it?

Q. No, whether your police should not protect the man from those who are offering violence to him because they disagree with his opinions.

A. Well, it entirely depends, Counselor, what you mean by "unpopular." Do you mean——?

Q. I say "disagreed" now.

A. Well, I say, would you mean—this would be unpopular language if a Communist was to get on the public street corners and assail the President of our United States assail our system of government, advocating the overthrowing of our government, and words in that respect. Is that unpopular?

Q. May I ask you a question?

A. Or do you refer to something that's politically unpopular to me?

Q. No, I refer to most any kind of things which may be unpopular with certain groups. Suppose somebody got up and wanted to make a speech in public advocating birth control, let us say?

A. That's never been stopped.

Q. That might be unpopular in certain places, though?

A. Yes, but we never had any trouble with that.

Q. Now, suppose—what do you think about the advocacy of Naziism? That might raise trouble in certain sections, might it not?

MR. MATTHEWS: I object to all this as irrelevant to this issue and as simply an attempt to use the Mayor of Jersey City on this stand to wash the linen of these gentlemen back there, and their different propagandists throughout the country. Naziism wasn't at stake in Jersey City. It was Ernstism and Baldwinism and Communism and Thomasism, as representing the Garland Fund, the Civil Liberties Union and the rest of these Reds. Now, I submit that that question is not relevant to this issue. Naziism isn't in it.

THE COURT: Say "such as Naziism."

Q. Such as Naziism. I am perfectly willing to substitute the list which distinguished counsel for the defendant has just given me; any one of those.

MR. MATTHEWS: Well, I still object to the question. "Such as," doesn't change it.

MR. FRAZER: Well, I have withdrawn my question and I have substituted your list.

MR. MATTHEWS: "Such as" doesn't ever change it in the least.

THE COURT: It is withdrawn.

MR. MATTHEWS: Thank you.

MR. FRAZER: Your list is substituted for Naziism and such things.

A. Do you want me to answer?

Q. Yes.

A. I stated publicly here, and after examining Commissioner Casey's list of the thousands of permits that's granted, that we opposed no public utterances from anyone. Never has an occasion ever arisen that we were called upon to oppose any public utterance. In the first place, the criticisms and the objections always come from the people. That has never been filed or never been heard of in Jersey City prior to this trouble that I referred to a few moments ago on November 29th, as you stated. We have never had any occasion to oppose anyone. Therefore the City of Jersey City has never been called on to decide.

Q. But it now is in a position where it has decided that it will not permit any meetings of this type on account of the unrest?

MR. MATTHEWS: That is his testimony.

A. The disorder and the discontentment and the feeling of our people has brought it about.

Q. Yes, and that's the disposition of the Commission at the present time?

A. Yes.

Q. By the way, wasn't one of the Reds that you referred to Mr. Arthur Garfield Hays?

A. Yes, sir.

Q. Did you know that in a case in Chancery in '34 he represented the American League of the Friends of New Germany of Hudson County?

MR. MATTHEWS: I object, if our Honor please. What difference does that make? He would represent anybody, anybody. He doesn't disagree with his retainer, that fellow.

MR. FRAZER: Have you finished your scurrilous remarks?

MR. MATTHEWS: Those aren't scurrilous. I am dealing with somebody scurrilous. They are aptly proper for him. You don't dress a pig in the livery of a gentleman.

THE COURT: I hardly think, Mr. Matthews, that that is language that should be used in a court room.

MR. MATTHEWS: No, your Honor, I am sorry that I had to, but I wanted to answer Spaulding. He was so sarcastically inquisitive of me.

MR. FRAZER: I wasn't sarcastic, sir. I was quite serious.

MR. MATTHEWS: I can't imagine it.

Q. Now, in the case of the American League of the Friends of New Germany of Hudson County against Lewis B. Eastmead, there was a denial by Union City and Hudson County of a right to use a hall hired for the purpose of advocating, as I understand it, Naziism. The meeting was prevented; an application was made to the Court of Chancery to enjoin the denial of such hall. Vice-Chancellor Bigelow makes this statement:——

MR. MATTHEWS: I object to this testimony. It has to do with Union City, which is not the municipality involved.

MR. FRAZER: I haven't finished my question yet, sir.

MR. MATTHEWS: There is no need of putting on the record what does not belong there.

MR. FRAZER: Well, then, would you keep some of your remarks off of it, sir?

MR. MATTHEWS: Yes. I only do it in defense against your attempt to lug in what should not belong here.

Q. (Continuing.): Vice-Chancellor Bigelow used this language, sir——

MR. MATTHEWS: I object, if your Honor please, that this isn't relevant to this issue.

THE COURT: He hasn't finished the question. I will rule on it when he has.

MR. MATTHEWS: I object to——

THE COURT: If it is Union City, it has no relevancy to Jersey City if you are asking about matters of policy, has it?

MR. MATTHEWS: Well, your Honor has heard that it is Union City.

THE COURT: I know, I have read the opinion.

MR. MATTHEWS: So have I. You gave it to me the other day.

Q. (Continuing.): "Our law does not prohibit the public expression of unpopular views. It is lawful to advocate, for instance, the establishment of a dictatorship in America, or a Soviet form of government, or an hereditary monarchy, or the abolition of religious freedom, or other changes in our political, economic or social system, no matter how unwise or how shocking. If lawless elements in the community, instead of ignoring such propaganda, or meeting it by sound argument, resort to riot, it is the duty of police to protest the lawful assemblage and to repress those who unlawfully attack it." Is that the policy today in Jersey City?

MR. MATTHEWS: I object to that, your Honor.

THE COURT: You may answer it.

MR. MATTHEWS: Why should he be bound by the statement of Vice-Chancellor Bigelow?

THE COURT: He is not bound by the statement, Mr. Matthews. It is a question of whether that is his policy.

MR. MATTHEWS: Mr. Bigelow's opinion has never reached a court.

THE COURT: I understand that.

MR. MATTHEWS: Above.

THE COURT: He is not giving it any authority.

Q. Will you answer, Mayor?

THE COURT: Do you want it read again?

A. The Vice-Chancellor, from my experience, has never laid down any rules or regulations to govern any city. Where conditions may arise, that there is danger of life and property, I would be guided entirely by local conditions. I am afraid that the Vice-Chancellor could not direct me, if conditions presented itself, that warranted immediate action for the saving of the lives and property of the people.

Q. Now, you haven't yet answered me, whether the policy expressed by the Vice-Chancellor is the policy of the police of Jersey City.

A. I expressed my policy clearly to you. I told you that I would ignore any Vice-Chancellor's order, if the surrounding conditions was endangering the lives of people present, or endangering the peace and quietness of that community. The Vice-Chancellor never expects any police official to stand idly by because of some Red utterances where dangers are surrounding the lives of the people. He has to use his own discretion and own judgment. That's the law, in my estimation. Nobody can restrict me where there is a danger of a man or a woman or children losing their lives.

Q. Mr. Norman Thomas a week ago Saturday under a permit which was issued by the City of Newark endeavored to make an address in Military Park in this city at the time designated in the permit. There were ample forces of police in the park. A mass of hoodlums attacked

Mr. Thomas. The police removed Mr. Thomas instead of arresting the hoodlums. Do you think they did their duty?

MR. MATTHEWS: I object to that, if your Honor pleases. Why should he character what the police of one department did? The question in this case is what is the policy of the police department of Jersey City?

THE COURT: You will have to put in that, "if that had happened in Jersey City."

Q. Assuming that as a condition in Jersey City, would you think that the police of Jersey City had done their duty in removing Mr. Thomas instead of arresting the hoodlums?

A. That is exactly the condition that we have been fighting and resisting ever since we have objected to granting these permissions to talk. We have anticipated all this trouble. Newark foolishly granted that permission. They permitted this man to talk, and this uprising took place. Now, from what I read in the papers, by the head of the veterans there, he said that Norman Thomas brought that gang of hoodlums there. (Laughter in the court room.)

MR. MATTHEWS: Some of the hoodlums are here.

Q. Do you believe that?
A. Well, he said it.
Q. Who was it that said it?
A. A former Assistant District Attorney.
Q. Oh; Mr. Breitkopf?
A. Yes.
Q. Why, he was one of them, wasn't he?
A. He was one of what? Hoodlums?

MR. MATTHEWS: I object to that.

A. (Continuing.): Do you call him a hoodlum?
Q. I don't know—I thought he was in the party.
A. Well, I thought he was a high-class gentleman. He is a veteran, the head of the veterans of Newark.
Q. I thought he was one of the party; wasn't he, Mayor?

A. He was there. The papers——

Q. What was he doing there?

A. What has any public citizen got a right? There is a veteran; there is a man that fought for his flag. He wasn't out betraying his country, as Thomas was and the rest of them. That man laid his life down practically, and you deny him the right to be present, where an element of this character is brought in to address a public meeting.

Q. Did he do anything to keep peace there, or anything of that sort?

A. Who?

Q. Mr. Breitkopf.

A. I don't know. I am not familiar with it, Counselor, only what I read in the newspapers.

Q. I see. But you don't believe much in these civil rights, do you?

A. Not coming from an element of that character. Whenever I hear a discussion about civil rights and the rights of free speech and the rights of the Constitution, always remember you will find him with a Russian flag under his coat; you never miss.

Q. Well, you were then very accurately quoted from your address at the Chamber of Commerce on January 12; ou said exactly that.

A. Right; and that's the truth; and I have had a vast experience, Counselor; plenty of it.

Q. Mayor, what method do you use in handling Communists?

MR. MATTHEWS: I object to that question.

A. What method?

MR. MATTHEWS: Unless they are described.

MR. FRAZER: I am asking him——

MR. MATTHEWS: He has said that as to these fellows who were agitating to overthrow the Government by resolution, what his attitude has been.

THE COURT: The persons you define as Communists.

MR. FRAZER: Of course.

Q. I call your attention, Mayor, to a statement which you are alleged to have made in an Americanization Day address in Jersey City on the 25th of April. Did you make such an address?

A. Where? I don't recall it.

Q. Americanization Day in Jersey City, April 25; didn't you make a speech there?

A. I don't think so.

Q. The *New York Times* of April 26 quotes you on that occasion as stating that you would not permit a May Day parade to be held in Jersey City.

MR. MATTHEWS: Just a minute. I object, if your Honor please. He ought to be confronted with the *New York Times*.

MR. FRAZER: I am trying to refresh his memory.

MR. MATTHEWS: He says he doesn't remember. You can refresh it with a clipping, not with something you have typewritten, sir.

A. If you will recall the phrase, Counselor——.

Q. This was in 1937, not this year.

A. What year?

Q. 1937; April 25, 1937.

A. Where was the meeting, do you know?

Q. It was in Jersey City——

MR. MATTHEWS: Where in Jersey City?

MR. FRAZER: Well, I haven't that in my note.

Q. Do you remember having made an Americanization Day address in Jersey City on April 25, 1937?

A. No, I——

Q. At which you stated——

MR. MATTHEWS: Now, I object. He says he doesn't remember it and he is being confronted——

MR. FRAZER: Well, I am refreshing his memory.

THE COURT: Have you got the clipping, Mr. Frazer?

MR. FRAZER: I haven't the clipping. I have a transcript from the clipping.

THE COURT: Well, show it to the witness.

MR. MATTHEWS: The transcript, of course——

MR. MATTHEWS: We don't know whether that is the transcript of the clipping; if Mr. Frazer will guarantee that that is the transcript I will take his word for it, but he doesn't know if he got it from other counsel or where it comes from.

MR. FRAZER: I got it from a clerk in my office who made the copy.

MR. MATTHEWS: From the paper?

MR. FRAZER: From the paper.

MR. MATTHEWS: If you will guarantee it is from the paper I will submit to the question to the Mayor.

Q. You are reported in the New York *Times* of April 26, 1937, to have told the assemblage at the Americanization Day ceremonies in Jersey City that you would not permit a May Day parade in Jersey City. You won't, will you, anyhow?

A. Oh, I should say not.

Q. All right. Whether you said it or not that is your policy?

A. Do you mean to tell me that I would live up to my obligations of my office, a city constituted as Jersey City is, to permit an army of invaders to come into Jersey City to aggravate the peace and quietness and happiness of that city, and grant a permit issued by the officials of Jersey City? I say I would not.

Q. All right.

A. Because they have no place there in the beginning.

Q. Then you are quoted as having gone on to say: "If other cities would follow my lead in handling Communists there would be no Communists in the United States." Now, what is your method of handling Communists?

A. My method of handling Communists is to deal with them as an American public official.

Q. Yes, and how do they do?

A. Communists has no place in our American government; first they are not sincere Americans, they are endeavoring to deceive and overthrow the government.

Q. You have already defined a Communist, Mayor. Now, will you tell me how an American official should handle Communists?

A. Suppress them.

Q. Suppression?

A. If possible.

Q. And what methods of suppression would you use?

A. Well, just as we are suppressing them in this case, we are denying them the right to hold public gatherings because of the dangers of violence and bloodshed.

Q. And you don't think it is the duty of your police to protect them in the expression of their ideas?

A. How can anybody——

MR. MATTHEWS: He hasn't said that.

THE COURT: You may answer.

A. (Continuing.) To go into any country—now, I have been in Russia, I was in Russia for four days, the man don't live to get on a public street and assail the government in Russia, and I was told by one of the principal officials there he would be shot down.

Q. Well, do you think that's right?

A. That's their method and that's the system they are trying to adopt in this country.

Q. Is that your method in Jersey City?

A. No, it is not my method, it is not my method, but that's the government that the Communists is trying to instil into this country; they won't be allowed to do it in their own country but they come over here to display their loyalty to Soviet Russia.

Q. That was the Communistic method of suppressing?

A. That is their methods in Russia. That is, from my observation.

Q. What are your methods in Jersey City for suppressing this?

A. Law and order.

Q. What is that?

A. Law and order is obeying the law.

Q. And are you obeying the law when your police do not——

A. I am obeying the law.

Q. —protect citizens in the exercise of their constitutional rights?

A. There is no constitutional rights involved in this question, Americanism is involved in this question; there is no constitutional rights or the right of free speech. I told you from the record, Counselor, that we never denied a permit, we never denied anything up to this uprising. Now, my experience in Michigan and my experience in Pennsylvania and in Ohio leads me to believe that it is time that some public official would act.

Q. Now, can I summarize what I conceive the gist of your testimony on this subject by simple syllogism——

MR. MATTHEWS: I object to that unless he explains to the Mayor what a syllogism is.

MR. FRAZER: Well, the Mayor will very easily see what the syllogism is.

MR. MATTHEWS: He may not see what the syllogism is, it may be a scholastic syllogism or it may be a Freudian syllogism, the latter being very logical.

Q. You reason somewhat this way, do you not, Mayor——

MR. MATTHEWS: That is better; that is what he means by syllogism, reasoning.

Q. That everyone who asserts constitutional rights of freedom of speech, press and assembly is a Red or Communistic?

A. No, I won't say that.

MR. MATTHEWS: He never said such a thing, Mr. Frazer.

Q. That every Red or Communist should be suppressed. Therefore——

MR. MATTHEWS: No, I object.

Q. Therefore that every person——

MR. MATTHEWS: That is not his statement. He said if he did violence or advocated the overthrow of the Government.

Q. Therefore that every person who advocates the constitutional rights of freedom of speech, of the press and of assemblage should be suppressed.

MR. MATTHEWS: He never said anything like that; that is not his testimony.

MR. FRAZER: I didn't say so. I am just trying to ask if that is his reasoning. That is what I deduced from his reasoning.

MR. MATTHEWS: That is not his statement and I object to it. Those statements are preposterous to be put into the mouth of the Mayor.

A. Counselor, you don't get it clear. You could say to me, you should ask me whether or not I believe in an organized mob that is organized for the purpose of overthrowing the Government and creating violence and disorder to the extent of arousing the people similar to what we have got in Spain.

MR. MATTHEWS: Your answer to that would be no.

A. (Continuing.) If you get that before me I can answer that.

Q. Yes, I think you can answer that the way you want.

A. No, but that is the condition we are trying to suppress, that is the condition we are combatting today.

Q. How large an organized mob other than veterans have you had in Jersey City in the last eight months?

MR. MATTHEWS: Your Honor please, isn't the testimony in this case, that it is because of their action that they haven't had the mobs, they have prevented riot and bloodshed of other cities in Jersey City?

THE WITNESS: Am I permitted, Judge, to state——

THE COURT: Yes.

A. The Counselor don't bring out the facts that this is an organized movement to control labor of this country; when the move was made headed by John Lewis, that was a Communistic movement to control labor in this country the same as it is in Spain, and in Mexico and Russia.

Q. Well, John Lewis——

A. (Continuing.) Just a minute. I say that they failed, that they have been planning for ten years to obtain charters from the American Federation of Labor, the American Federation of Labor not knowing what their purpose was, and when they struck they struck with the purpose of controlling labor, in order to dominate and dictate the terms to this country but they failed and that gentleman sitting there was the instigator of it all.

MR. MATTHEWS: Meaning Mr. Ernst.

A. That Morris Ernst was the man who was the instigator of this movement in order to try to control this country.

Q. Well, you just mentioned John L. Lewis. I understood you to say the other day he is not a Communist.

A. John Lewis is just in there simply because he had to take and assume command of that group.

Q. Why did he have to assume command of that group?

A. Because he was in danger of his own safety in the miners union with John Brophy.

Q. John Brophy was in the miners union?

A. John Brophy was the man who ran against John Lewis and John Lewis branded him as a representative of Soviet Russia when he was a candidate as president of the Miners Union in Pennsylvania.

Q. Are all the rest of the CIO leaders—I understood you to say so—Communistic?

A. I would say the majority, but I want to say and qualify myself, Counselor, that the members of the CIO has been misled and deceived, that there is fine, outstanding Americans is members of the CIO and it is my duty and every other public official's duty to expose this to get them out of there.

Q. Well, now, how do you distinguish between the fine, outstanding American CIO's coming to you for permission to speak and the anarchistic Communistic Red CIO?

A. Because the rank and file never makes an appearance, never makes an application; it is always the leaders. Thousands of men have been brought into this movement because of force and because of fear. I will show you thousands and thousands of the automobile industry that has been driven into this movement because they are fearful of their lives.

Q. Now, a good many of these smaller unions, Mayor, are led by good, hardworking men, aren't they?

A. Small unions?

Q. The local unions of the CIO.

A. No, I won't say that. I charge that any man selected by the leaders of the CIO that is dispatched into any state such as Carney was dispatched into this state, such as every other leader has been practically dispatched into all the different various states, are selected only for one purpose and that one purpose is to simply browbeat and drive these people into that union.

Q. You still say they are Communists no matter what their political affiliations might be?

A. Oh, well, we won't get into the political affiliations, what difference does that make? We are discussing—you have got to realize that men of this character is anything that is beneficial to them.

Q. Well——

A. He will be a Republican tomorrow or a Democrat. They would prefer to have the Communist Party in control, that is their purpose, and they will mark time until that day arrives, and they thought that day had arrived with this American Labor Party. They are sadly mistaken. The American Labor Party is going to be wiped out because the American people realizes now who is behind the American Labor Party.

Q. They are going to be wiped out?

A. They are going to be wiped out just as sure as you are standing there.

Q. Now, in each one of the plants where the CIO is organized—there are some of them in Jersey City, aren't there?

A. There is one plant, the steel company has 800 members, and they are all high-class, hardworking men.

Q. Now, they are CIO men, they are not Communists?

A. No, they are not Communists but the men who put them in there are.

Q. Now, they have——

A. Through fear.

Q. —they have persons who head up their groups within the plant?

A. Because this steel company, Counselor, the heads of the steel organization, labor unions of the steel organization, I charge are associated with Brophy and the rest of these Communist leaders, so these men in Jersey City was compelled to step in line and follow because they had to.

Q. Well, now, we will take the 800 men in the plant who you say are good working men.

A. The residents of Jersey City, been living with me, I know them all my life——

Q. And in their plant organization they choose someone to be the representative in dealing with the management?

A. And they had a strike only a few months ago; did you know it?

Q. I didn't know.

A. I would like to explain that.

(Recess.)